بسم الله الرحمن الرحيم



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Living Islam with Purpose

A NAWAWI FOUNDATION PAPER
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THE PROPHET MUHAMMAD WAS ASKED WHICH PEOPLE were the best. He replied: “You will find that people are mines of gold and silver. The best of you in the time of ignorance before Islam will be the best of you in Islam if they gain understanding of the religion.”[1] This Hadith implies that Islam requires both belief and understanding to bring out intrinsic human goodness, even in the best of people. However great the native goodness of Muslims may be, they can only realize their potential as individuals and members of communities through an adequate understanding of their faith. The need for a deeper understanding of Islam in order to achieve excellence clearly applies to Muslims in America. They have exceptional potential. They are intelligent, industrious, and uniquely promising, yet, like undiscovered mines of gold and silver, their promise remains largely untapped due to insufficient acquaintance with their faith, its resources, and legacy.[2]

The need for deeper understanding of Islam for personal and community growth is not lost on most American Muslims, nor do

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they lack the will to gain it. What seems to be missing is an operational framework to facilitate the acquisition of deeper understanding and put it to use. This paper focuses on "five operational principles" that provide such a framework. They are:

- TRUSTING REASON
- RESPECTING DISSENT
- STRESSING SOCIETAL OBLIGATIONS
- SETTING PRIORITIES
- EMBRACING MAXIMS

These five operational principles are age-old Islamic guidelines. Each of the principles is firmly based on the Qur'an and Sunna and supported by the general consensus of traditional Islamic scholarship. Ibn Rāhawayh, a renowned scholar of Hadith[3] and close companion of Imam Aḥmad ibn Ḥanbal, described legal maxims — the fifth operational principle of this paper — as "positions arrived at by reasoning on the basis of the general statements of the Prophet."[4] This description applies equally to the four other operational principles discussed; each of them constitutes a universal truth rooted in the corpus of the Qur'an and Hadith as a whole.

It is not an exaggeration to say that the five operational principles set forth in this paper embody the wisdom and consummate sensibility of the Prophetic teaching. They engender balance and moderation, while instilling practical understanding and tangible guidelines. By emphasizing core values and universal principles, the five operational principles constitute a bridge between Islam and the ideals and values of other cultures and religions. Muslims who understand them can speak coherently about their faith in any setting. They can make themselves relevant in diverse cultural surroundings, especially those of the West, and lay the foundations of a vibrant indigenous Muslim presence wherever they may be.

It is necessary to emphasize the obvious: These five operational principles do not constitute everything a Muslim needs to know about Islam. They are not a substitute for the study of Islamic theology, law, or spirituality. What they do provide are general rules for grasping and wisely applying the broader tradition. The renowned sage ʿAbd al-Karīm al-Jīlī stated: "Operational knowledge (*al-ʿilm al-ʿamalī*) is the wisdom that guides a wise person to benefit from his knowledge."[5] These five principles are examples of fundamental operational knowledge and provide Muslims with a necessary skill set to utilize other forms of knowledge effectively. Each of the five operational principles is critically important, but, if the reader were to come away from this paper with only one idea, it should be this: Islam must make sense, but, to make sense, it requires intelligent followers with sound understanding.

While this paper is written with the American Muslim community in mind, its five operational principles are relevant for Muslims everywhere, especially those in Canada, Britain, and Western Europe. These principles belong to a rich communal heritage. They are applicable to all Muslims and are not just for scholars. As al-Jīlī indicates above in his reference to the wise use of operational knowledge, application of operational principles such as these is a trust and should be undertaken with integrity and wisdom, which is the case with all types of knowledge.

Because of their utility in understanding Islam, the five operational principles ought to constitute an essential component of Muslim understanding. Ibn ʿAṭā'-Allāh, the renowned jurist and sage, stated: "The beginnings are the manifestations of the ends."[6] The way that things begin reflects how they are likely to end. A good beginning promises a

bright future; a solid foundation supports a strong and lasting structure. These five principles offer the American Muslim community an excellent place to begin a promising future. They should constitute one of the essential elements of Islamic education at all levels. Even though their presentation may seem somewhat abstract, they are not difficult to comprehend, and educators can make them easily accessible to different people in appropriate ways.

Islam presents an array of potentially confusing sets of five: five pillars,[7] five ritual prayers, five act classifications,[8] five major objectives of law, and five core legal maxims. I have complicated matters by selecting five operational principles, but only two of the other sets of five require attention in this paper; they are the five major objectives of Islamic law and its five core maxims.

For easy reference, the five major objectives of the law are the preservation of:

1. RELIGION
2. SELF
3. REASON
4. CHILDREN
5. WEALTH

The core maxims are:

1. MATTERS WILL BE JUDGED BY THEIR PURPOSES.
2. CERTAINTY WILL NOT BE OVERTURNED BY DOUBT.
3. HARM MUST BE REMOVED.
4. HARDSHIP MUST BE ALLEVIATED.
5. CUSTOM HAS THE WEIGHT OF LAW.

The five core maxims make up the greater part and the primary focus of this paper. To understand their utility, the reader should keep in mind that they are not merely useful guidelines; they embody the essential spirit of the religion. In the eyes of traditional Muslim scholars, the five core maxims constitute a concise summation of everything Islam represents. To understand the five core maxims is to understand the essence of Islam in five short sentences.

The Prophet said: "The essence of the religion of Islam is giving good counsel."[9] I write this paper with the hope that it will provide good counsel. It reflects my understanding and interpretation of the Islamic tradition. I chose these five principles among many others, such as honoring knowledge, affirming human dignity, and being committed to social justice. I selected these particular five because of their practicality and immediate relevance to the American Muslim community; other operational principles integral to Islam might serve just as well or even better. This paper attempts to explore new ground. It offers a meaningful perspective and solicits creative discussion.

OPERATIONAL PRINCIPLE ONE
TRUSTING REASON

Each of the principles discussed in this paper stands as independent proof of the primacy of reason in Islam. Reason lies at the heart of Islam's worldview. God endowed human beings with dignity, and the capacity to reason is one of the principal grounds of their unique distinction among beings. The rational order of the universe makes it accessible to human reason and transforms it from a world of random phenomena into a marvelous sign of God and an object of speculation and scientific investigation.

The protection, preservation, and cultivation of the power to reason count among the major ob-

jectives and greatest societal obligations of Islamic law. Moral responsibility (*taklīf*) is the first prerequisite for obligatory Islamic practice and never has legal validity in the absence of the faculty of reason. Because they lack the capacity to reason and to fully comprehend mundane realities, the mentally incapacitated, insane, and children are not accountable before God, nor are they obliged to obey His commands. The Qur'an repeatedly refers to the excellence of reason and deems it a principal source of guidance. The following verses teach that reason leads to wellbeing and eternal felicity, while turning one's back on reason leads to calamity and loss:

> *In this manner, God makes His signs clear for you that, perhaps, you may reason* (Qur'an, 2:242).

> *God is the one who gives life and death and to God belong the alteration of the night and the day. Do human beings not reason?* (Qur'an, 23:80).

> *God will put a loathsome chastisement upon those who do not use their reason* (Qur'an 10:100).

Imam al-Ghazālī, one of the most acclaimed scholars in Islamic history, held reason's lofty status in Islam to be beyond dispute:

> Know that the question of reason's preeminence is something that does not require much trouble to clarify, especially since the eminence of knowledge itself only becomes clear by virtue of reason. Reason is the source of knowledge, the place where it first manifests itself, and the foundation upon which it stands. Knowledge flows from reason like fruit comes from a tree, like light from the sun, and sight from the eye. And how could something like this not have preeminence when it is also the means to felicity in this world and the next? How could there be any doubt about this?[10]

In the Islamic tradition, religion without reason is a disaster, and listening to the voice of reason is imperative. The noted scholar al-Rāghib al-Iṣfahānī, a contemporary of al-Ghazālī, stated: "Never be satisfied with a person's Islam until you have tested his reason." Islamic ethics designates reason as the first necessary element of moral character.[11] In the absence of reason, good character is like a seemingly stable building on a weak foundation.

The authority of reason forms the foundation of Islamic theological and legal thought. Until recently, most Western academics wrongly looked upon the Muʿtazilī school of theology as the sole example of Islamic rationalism. In reality, its rivals, the Ashʿarī and Māturīdī schools, which make up the mainstream of Sunnī orthodoxy, are no less rationalistic, and their speculations consistently demonstrate originality and intellectual depth.[12] Pragmatic reason is central to the Islamic legal tradition. Even the Ḥanbalī school of law, which is known for textual literalism, is highly pragmatic and cedes a significant role to reason in both theology and law. In fact, the school was divided from an early period between two wings, one of which relied more heavily on reason than the other. Ibn Taymiyya, one of the greatest Ḥanbalī scholars, and his disciple Ibn al-Qayyim belonged to the school's rationalist wing. Another school of law, the extremely literalist Ẓāhirīs rejected the use of reason in theology and law but never won a significant following; they died out early, in part, because of their rejection of reason.

Conflict between religion and science was virtually unknown in Islamic intellectual history. The harmony between the two is epitomized in the life and work of the brilliant ninth-century Muslim chemist Jābir ibn Ḥayyān, who repudiated alchemy as a valid science and laid the empirical foundations of chemistry. His religious devotion earned him

the spiritual designation of "the Sufi." Ibn Ḥayyān began one of his renowned works on chemistry, *The Book of Seventy* (*Kitāb al-Sabʿīn*), with the words: "Certainly the mention of God is more noble, majestic, and great than what follows." He opened the book with a lengthy discussion on the imperative of purifying the soul from ostentation and other spiritual defects as a prerequisite to the pursuit of scientific learning.[13]

Islam produced an array of religious scholars who also excelled in the rational and empirical sciences. Ibn Rushd (Averroës), the learned Andalusian judge and legal scholar, left an influence on Islamic law that is felt even today. His commentaries on Aristotle affected the course of European intellectual history. He composed more than fifty works ranging from his primary fields of law and philosophy to medicine, psychology, zoology, and astronomy. It is said that his medical opinions were as eagerly awaited in Muslim Spain as his interpretations of the law.[14] Likewise, Fakhr al-Dīn al-Rāzī, a noted Qur'anic commentator, theologian, and legal theorist, mastered the rational and empirical sciences of his age and compiled *The Consummation of Ancient and Modern Ideas* (*Muḥassal Afkār al-Mutaqaddimīn wa al-Muta'akhkhirīn*), in which he summarized the philosophical, theological, and scientific thought of prominent ancient and latter-day thinkers.[15]

Islamic legal thought divides the rulings of the revealed law into two categories according to their connection with reason. The first category is immutably fixed (*tawqīfī*). Its rulings are accessible to intellectual contemplation, but they are not contingent on discernible rationales and conditional purposes and, therefore, cannot be changed. Immutably fixed rulings must be observed just as they were originally revealed and are not open to legal interpretation. Designation of Ramadan as the month of fasting is immutably fixed. The second category is rationale-based (*muʿallal*). Its rulings have rationales (*ʿilal*) and tangible purposes (*maqāṣid*), which make them accessible to reason and the subject of ongoing legal interpretation (*ijtihād*). Marriage and most of the laws relating to it are rationale-based.

The immutably fixed rulings of Islamic law pertain mostly to the details of religious rites. Compared to rationale-based rulings, they constitute an essential but relatively small part of the law. The primacy and predominance of rationale-based rulings in the law give it flexibility and relevance in changing times and diverse places. Because rationale-based rulings constitute the overwhelming majority of Islamic jurisprudence, every ruling in the law is presumed to be rationale-based until the contrary is proven. A relevant legal maxim states: "To have rationales is the basic premise of the law" (*al-aṣl al-taʿlīl*). No proof is required to hold that an Islamic ruling has a rationale; the full burden of proof falls exclusively on the shoulders of anyone making the claim that a ruling has no rationale and is immutably fixed.

Certain aspects of ritual prayers provide an illustration of immutably fixed and rationale-based rulings occurring in combination. Islamic prayers are divided into two types: audible and inaudible. The designation of which prayers are silent and which are recited aloud is immutably fixed and is not contingent on a rationale. But there is a rationale behind the prayer leader's lifting his voice in audible prayers: it is preferable that those praying behind him be able to hear the recitation. In keeping with this rationale, it is legitimate to amplify the prayer leader's voice in different ways so that greater numbers of worshippers can

hear the recitation. In the past, Muslims designed acoustically innovative architectural structures for this purpose; today, they use microphones.

The intrinsic rationality of the Prophetic law shows that God made the law for human beings and that human beings were *not* made for the law. Since most Islamic legal rulings have discernable rationales, they require ongoing scrutiny and legal interpretation to ensure that their application remains consistent with their rationales.[16] Each text has a context, and the religious scholar must understand both; the law cannot be applied mechanically or by rote. In acknowledgement of the rational insight and wisdom required for the proper application of the law in different times and places, competent legal scholars are known as "people of understanding" (*fuqahā'*). The same skills are not required for committing the Qur'an and Hadith to memory; those who master these arts are respectfully called "memorizers" (*ḥuffāẓ*).

Muslims take pride in the fact that Islam is a religion of reason and produced a global civilization based on the harmonious cultivation of the religious, rational, and empirical sciences. In practice, however, many Muslims today seem to have lost the gift of sound intuition and the confidence to trust in reason. Often, they are unnecessarily torn between what they instinctively know to be right and between competing authoritarian claims made in Islam's name that do not make sense and may even conflict with basic human values. As Larry Poston shows in his study of Western converts to Islam, most converts cite Islam's compatibility with reason and its consistence with common sense as one of its major attractions.[17] Yet they too must guard against falling victim to counterintuitive teachings that invalidate the very rationality that initially attracted them to the faith.

In the end, Islam must make good sense. As al-Rāghib al-Iṣfhānī held, a Muslim's competence in Islam cannot be trusted before testing his or her reason. The same applies to Muslim communities and the ideas and outlooks they teach; any approach to Islam that does not cultivate and respect the free and candid use of reason is inadequate and cannot lay the foundations for a viable future.

OPERATIONAL PRINCIPLE TWO
RESPECTING DISSENT

Islam only speaks with a monolithic voice on foundational beliefs and practices. In other matters, it speaks with multiple voices and recognizes the legitimacy of dissent and competing interpretations. Although Islamic history has had periods of greater and lesser toleration, acknowledgement of divergent opinions is a central part of its heritage. Muslim scholars were trained in the protocol of dissent (*adab al-ikhtilāf*), which enabled them, for the most part, to benefit from opposing points of view and live civilly with those who held them.

Respect for dissent is a natural element in healthy societies; it is essential to human dignity and intellectual development. It nurtures a culture of tolerance that allows for openness to new ways of thinking and to other communities with different worldviews. Historically, Islam's receptivity to novel and often conflicting ideas was an integral part of its cultural and intellectual success. This respect for dissent lay at the foundation of the religion's capacity to foster an international discourse of ideas; it enabled Muslims to become heirs to the great intellectual legacies of the past.

The right of dissent and the requirement to respect it are anchored in the manner in which Muslim scholarship approached scriptural interpretation. Scholars agreed that religious texts have different degrees of conclusiveness and often convey multiple meanings. Islamic scholarship divided religious texts into two categories: 1) those which are categorically authoritative (*qaṭʿī*) and 2) those which are presumptively authoritative (*ẓannī*).

To be categorically authoritative, a religious text must pass two tests. The first pertains to authenticity of transmission; the second pertains to the number of meanings it conveys. In Islamic scholarship, the entirety of the Qur'an is categorically authentic (*qaṭʿī al-thubūt*). Hadith, on the other hand, have different levels of verifiable authenticity. Thus, the issue of textual authenticity applies in reality only to Hadith. Those Hadith that meet the highest standards of verification (*al-aḥādīth al-ṣaḥīḥa*) are categorically authentic from the standpoint of transmission, although they are not necessarily categorically authoritative from the standpoint of meaning. Hadith with lesser degrees of verifiability (*al-aḥādīth al-ḥasana wa al-ḍaʿīfa*) are presumptively authentic as regards transmission (*ẓannī al-thubūt*). They may provide legitimate supporting evidence but cannot constitute conclusive proof in isolation no matter how clear their meanings may appear.

Once the authenticity of a text has been established, the next question regarding meaning must be answered. In many ways, this second question is more important than the first because most dissent among Muslims over religious questions is based on divergent interpretations of authenticated texts; it is such texts that constitute the primary arena of religious dissent among religious scholars.

Texts that are categorically authoritative in meaning (*qaṭʿī al-dalāla*) allow for only one possible interpretation. But texts that allow for more than one reasonable interpretation are said to be presumptively authoritative in meaning (*ẓannī al-dalāla*). Such texts cannot logically be restricted to a single meaning, despite the fact that one of their meanings may appear stronger than the others. An applicable legal maxim states: "There can be no conclusive proof as long as the possibility of a contrary argument remains" (*lā ḥujja maʿa al-iḥtimāl*); with presumptively authoritative texts, the possibility of a legitimate contrary argument always remains.

> ALTHOUGH THE PROTOCOL OF ISLAMIC THOUGHT AGREES TO DISAGREE ON PRESUMPTIVELY AUTHORITATIVE MATTERS, IT SHOULD BE EMPHASIZED THAT DISSENTING VIEWS MUST BE HELD TO HIGH STANDARDS AND SOUND METHODOLOGIES.

Belief in God's oneness, the Last Judgment, and the prohibition of murder are based on categorically authoritative texts; they constitute primary foundations of the Islamic religion and are universally binding on Muslims.[18] Whether or not the Garden of Paradise comprises four or seven heavenly domains is a question based on presumptively authoritative texts; as are questions about whether God sent 124,000, 224,000, or some other undetermined number of Prophets.[19] Likewise, the discussion about how Muslims ought to hold their hands when standing in prayer revolves around texts of presumptive authority.

Beliefs and practices based on

presumptively authoritative texts may be said to have secondary status; they cannot constitute the foundational beliefs and practices that all Muslims are obliged to accept. Nevertheless, these secondary beliefs and practices are of vital importance in Islam and are not to be regarded as tentative or untrue. Although they belong to the realm of formal dissent and cannot be imposed on others, they constitute valid beliefs and practices for those schools and the individuals who accept them. In essence, each school of Islamic law constitutes a working methodology for reaching valid conclusions about presumptively authoritative questions.[20] The schools agree on categorically authoritative matters; their differences concern presumptively authoritative ones. Although each school claims to be a reliable guide in presumptive matters, they acknowledge the rights of others to dissent and do not claim conclusive authority for themselves in the absence of categorical proof.

One of the most important principles in the definition of Islamic orthodoxy, heresy, and sectarianism relates to this distinction between categorically authoritative (primary) and presumptively authoritative (secondary) beliefs and practices. As indicated above, the foundational content of Islam, which all Muslims are required to acknowledge, must be restricted to primary beliefs and practices based on categorically authoritative proof. While it is valid for persons and schools to adopt presumptively authoritative elements of faith for themselves, it is not permissible to regard them as obligatory for the Muslim community as a whole; to do so is heretical and sectarian. It is equally unacceptable by the standards of orthodoxy to insist that Muslims renounce their dissenting secondary beliefs and practices simply because other Muslims may regard them to be false. By defining orthodoxy in this manner, the dichotomy between categorically authoritative and presumptively authoritative proof provides a protected space for intra-Muslim dissent and discourse. It establishes freedom of dissent as an intrinsic and necessary religious right and relegates Muslims who deny that right to the marginal status of heretics and sectarians.

Although the protocol of Islamic thought agrees to disagree on presumptively authoritative matters, it should be emphasized that dissenting views must be held to high standards and sound methodologies. They are not worthy of respect merely because they constitute dissent. Respecting dissent does not imply honoring weak and arbitrary arguments or those founded on ignorance of the Islamic sciences. Respecting dissent means rejecting authoritarianism; it does not mean rejecting authority. Non-categorical proofs must be as authoritative as possible. They require reasonable evidence, sound methodology, and cogent reasoning.

In what follows, I will give a few illustrations of presumptively authoritative texts and legal interpretations. Many passages in the Qur'an and Sunna appear at first to convey only one possible meaning but, upon closer examination, turn out to be open to other interpretations. Too often Muslims speak out of ignorance on matters of interpretation as if they allowed for only one point of view and were closed forever to further discussion.

In the one presumptively authoritative text, the Prophet stated: "Whoever brings dead land to life shall own it." Legal scholars accept the Hadith as an authentic transmission and agree that its wording is clear. Still, they classify the Hadith as presumptively authoritative. Dissent over the Hadith's implications is based on consideration

of its original context, not questions of grammar and semantics. The Prophet functioned in different private and public capacities; he was a universal lawgiver, a governor and head of state, the head of a family, a personal friend, and so forth. Many Hadith cannot be properly understood without establishing the context in which they were spoken, and that is the case with this Hadith.

Imam Abū Ḥanīfa regarded the Hadith "whoever brings dead land to life shall own it" as an administrative provision that the Prophet made as governor of Medina. Thus, the Hadith relates to agrarian conditions specific to Medina at a particular time. Abū Ḥanīfa did not deny the validity of acquiring abandoned lands by bringing them under cultivation, as mentioned in the Hadith, but, given the Hadith's original administrative context in his view, its application requires official permission to ensure that it is suitable for application in a wide variety of conditions in diverse times and places.

Imam Mālik held a similar view; he required governmental permission for fallow lands lying within the greenbelts (*ḥarīm*) that surrounded traditional Muslim towns and cities. Since these areas were the property of the people, Mālik exempted any land within them from acquisition through cultivation despite the fact that such lands were technically fallow. Mālik did not require governmental permission, however, for lands lying beyond the greenbelts.

Imam al-Shāfiʿī's methodology is based on the premise that every Hadith will be treated as a universal statement of law unless the contrary is proven through another explicit textual reference. Al-Shāfiʿī held, therefore, that the Prophet made the statement in the Hadith in his capacity as a universal lawgiver. Thus, for al-Shāfiʿī, no restrictions apply to the acquisition of revived lands, and no governmental approval is necessary.[21]

The three Imams agreed on the validity of the same Hadith but interpreted it in three significantly different ways. Each of their readings has a claim to validity, although some may arguably be stronger than others.

The second presumptively authoritative Hadith recounts that a certain Companion's mother asked him to free a Muslim slave after her death. The manumission of slaves is an act of worship and atonement in the Prophetic law. The man chose to emancipate a non-Arab girl on his mother's behalf but could not ascertain if she was a Muslim. He brought her to the Prophet to verify that she believed in Islam. The Prophet asked her: "Where is God?" She motioned with either her head or her index finger toward the sky. The Prophet then asked her: "Who am I?" She pointed her index finger toward him and then toward the sky. The Prophet declared her to be a Muslim, and she was set free.

Some Muslims cite this Hadith as categorical proof that God has a physical location in heaven. Muslim theological schools, both Sunnī and Shīʿī, regard such as view as heretical and verging on disbelief, because it contradicts categorical proof and is based on conjecture. When this Hadith is contemplated in conjunction with parallel transmissions of the same narrative, its presumptively authoritative nature and inconclusiveness as a theological argument become clear.

Another narration of the same Hadith adds that the girl was mute and could not speak at all, which explains her gestures and the Prophet's readiness to accept them as a proof of faith. It would also clarify why the Companion was unable to ascertain that she was a Muslim. Since the girl was a non-Arab, she may not have known Arabic

well or at all, which would give an alternative explanation for the nature of the interchange between the Prophet and her. Another transmission states that the Prophet did not ask her: "Where is God?" but "Who is God?" Both wordings are unusual, however, because it was the Prophet's custom when asking people if they believed in Islam to say: "Do you bear witness that there is no god but God?" Another narration makes no mention of the girl's inability to speak. In it, the Prophet asked her the customary question: "Do you bear witness that there is no god but God?" And she replied: "Yes" without making gestures toward the sky.[22]

The account of the girl is authentic but conjectural in meaning. The mere fact that the she may have been mute or may not have known Arabic makes hers an exceptional case, and exceptional cases cannot establish theological or legal norms. The Hadith has nothing to do with designating a location for God in heaven; it is, however, a testimony to the Prophet's openness toward accepting declarations of faith.

The next two examples touch on the legal status of instrumental music and producing two and three-dimensional images of living things. It is commonplace to hear that Islam unconditionally forbids both. Yet there are noteworthy positions permitting them under certain conditions, as the following examples indicate. In any case, whether music and images are judged to be prohibited or permissible in the law, each ruling regarding them is predicated upon readings of presumptively authoritative evidence. Islam's position toward both questions is not immutably fixed like rites of worship; both issues are based on rationales and have tangible purposes, which leave their status open for discussion.

The majority of legal scholars forbade music; generally they did so on the ground that music was closely associated with drinking, dancing girls, and licentiousness, which was often the case in Middle Eastern and South Asian culture. But there were notable dissenting views on music when performed in other contexts. The famous Andalusian judge Abu Bakr ibn al-ʿArabī and the notable scholars Ibn Ḥazm and ʿAbd al-Ghanī al-Nāblusī wrote legal opinions in defense of music. Al-Kattānī, a contemporary Moroccan scholar, cites twenty Muslim jurists who wrote on various types of musical instruments and the arts of audition (*samāʿ*).[23] In many Muslim lands, hospitals made regular use of musicians, comedians (*muharrijūn*), and teaching hobbies to cure the sick and the clinically insane. As a rule, Muslim hospitals were pious endowments under the supervision of Islamic judges; their allowance of music, humor, and hobby therapy constituted legal validation of each.[24]

Similarly, most Muslim scholars upheld the prohibition of producing two or three-dimensional images of animals and human beings. They based their positions on numerous Hadith, from which they derived rationales such as preventing idolatry, precluding human beings from rivaling the creative power of God, and avoiding the strong this-worldly focus that such images may instill. But without violating these rationales, modern Muslim jurists

> RECEPTIVITY TO DISSENT COUNTERACTS RIGIDITY AND DOGMATISM; FAMILIARITY WITH COMPETING INTERPRETATIONS AND DIFFERENT POINTS OF VIEW LEADS TO FLEXIBILITY AND INTELLECTUAL MATURITY.

authorize the use of photo identification cards and permit the use of anatomically correct models of the human body to teach anatomy, medicine, and related sciences.

The thirteenth-century Egyptian scholar al-Qarāfī, one of the most brilliant and highly regarded jurists in Islamic history, mastered many technical skills and scholarly arts. He was known for his expertise in building astronomical instruments and other mechanical devices, to which he often attached three-dimensional mobile figures. Al-Qarāfī writes in his work *The Priceless Principles* (*Nafā'is al-Uṣūl*), a compendious work on legal theory, that he once designed a candlestick holder to tell the hours of the night. The main candle changed colors with each passing hour; the fixture contained a figure shaped like a lion whose eyes also changed color. During the first hour of the night, the lion's eyes would be jet black. At the second hour, they turned bright white; the next hour they became intensely red; and they continued to take on different colors until the break of dawn. At dawn, the figurine of a little man, the prayer caller (*mu'adhdhin*), emerged at the candelabrum's highest point with his finger placed to his ear, indicating that the time for prayer had come. Al-Qarāfī regretted never having discovered how to make the little man actually call the prayer.[25]

Traditional Islamic art was functional; it invariably served pragmatic purposes. One sees this exemplified in calligraphy, mosque architecture, schools, bridges, rugs, pottery, and so forth. Al-Qarāfī's candelabrum, as he indicates, was also artistically functional; it was meant to serve as a clock for staying awake at night until dawn. All the visual elements of the lion clock were calculated to break up monotony and keep one alert. Although there was nothing frightening about the figurine of a lion with eyes that glowed in different colors, it served as a somewhat amusing diversion that seems to have hinted: imagine that a lion like this *were* standing in the room, would you fall asleep? The lion and the prayer caller in al-Qarāfī's candelabrum were not frivolous objects; the purpose behind them was akin to those behind modern photo identification cards and anatomically correct models of the human body.

Respecting dissent means respecting the truth and recognizing that it often takes different paths and results in competing visions of reality. Because dissent is indispensable in the quest for knowledge, Islamic scholarship regarded the compilation and study of dissenting opinions as an essential form of learning. Ibn ʿUmar, who was among the most learned of the Prophet's Companions, was widely known for the great value he placed on his extensive knowledge of dissenting opinions; he often said that he would not exchange that knowledge for the most valuable possessions on earth.

Receptivity to dissent counteracts rigidity and dogmatism; familiarity with competing interpretations and different points of view leads to flexibility and intellectual maturity. For reasons such as these, Islamic scholarship looked upon well-reasoned dissent as a divine gift and a special mercy to humankind. Muslim jurists often alluded to a weakly transmitted but widely known Hadith: "The dissent of my community is a special mercy."[26] The Umayyad caliph ʿUmar ibn ʿAbd al-ʿAzīz, who was known for his righteousness and probity, commented on this Hadith: "It would not please me if the Companions of Muhammad had not differed; if they had not differed, there would be no room for license in the religion." Al-Khaṭṭābī, one of the most prominent Hadith scholars, noted that the type of dissent referred to in the Hadith is dissent regard-

ing presumptively authoritative rulings of law. The opposing opinions that occur on such questions, al-Khaṭṭābī explained, are a special mercy from God and a unique honor (*karāma*) that distinguishes the scholars who find answers to them.[27] As regards scholarly effort in presumptively authoritative questions, it was held in the Islamic tradition that God would reward scholars for their dissenting opinions even if they were wrong. Jurists often cited the Hadith: "If a judge (*ḥākim*) interprets the law and finds the correct answer, he receives two rewards from God. If he is honestly mistaken, he receives one."[28]

Because most legal positions in Islam are based on conjecture and lead to dissent, classical academies for Islamic law made the art of debate a required subject in their curricula. In fields like Hadith, rote learning was sufficient, but this was not the case in law. Advanced students of jurisprudence had to acquire comprehensive understanding of the proofs and legal arguments that underlay Islamic law. Like doctoral candidates today, a law student attained the degree of an accredited jurist (*faqīh*, *mujtahid, muftī*) after preparing an independent thesis in support of an original legal opinion, which had then to be defended successfully before qualified jurists. According to George Makdisi, the Islamic legal tradition of debate, independent research, and defending a thesis contributed to the rise of universities in medieval Europe and adoption of the dissertation and doctorate as an essential part of advanced scholarship.[29]

Some Muslims today confuse intra-Muslim dissent with discord and regard questions and dissenting opinions as a threat to unity. Unity grows out of general agreement based on discussion and free choice. Unity must not be confused with uniformity. Traditional Islamic societies did not promote uniformity; they promoted unity in diversity. Uniformity can only be imposed by intimidation and social pressure; it cannot extend beyond the range of the force that imposes it. Imposing uniformity does not strengthen societies; it weakens them. Respect for dissent, on the other hand, provides a basis for true social cohesion. By promoting self-respect and human dignity, the operational principle of respecting dissent fosters mutual understanding and creates the basis upon which a healthy community can be built.

The value of respecting dissent lies not in the fact that it has become politically correct but because it brings different perspectives to light and promotes learning. A common dictum of Islamic education says: "Good questions are half of learning." The protocol of dissent *requires* that questions be asked, and it affirms that questioning is valid no matter how sacrosanct a matter may be. Things are not deemed sacrosanct in Islam without demonstrable proof, and each Muslim has a right to ask about that proof. When the right to question is respected, arguments cease to be worthy of consideration unless they are based on convincing reasons and can stand up to frank discussion and honest discourse.

Many Muslims believe that asking perplexing questions about Islam is not allowed. For some, it is shameful to ask such questions or to express doubts. Traditional Islamic scholarship did not regard it an impropriety to raise difficult questions about the religion or ask about one's doubts; rather, it was a sin *not* to ask. One of the intellectual responsibilities of the Muslim scholar was to prepare cogent answers for such inquiries. In order to respond effectively to the types of questions that might be asked, whole genres of scholarly literature were composed in question/answer form.

It was the scholars themselves who asked each other the most difficult questions. They made critical inquiries into the apparent contradictions in the Qur'an and Sunna; they raised questions about the greatest sanctities of the faith and the most fundamental precepts of the law. The Companions occasionally asked such questions themselves during the time of the Prophet. The Companion Abū Razīn asked him: "Where was our Lord before He created creation?" The Prophet answered: "He was in a state of complete hiddenness (*ʿamā'*), beneath which there was no atmosphere and above which there was no atmosphere. Then He created His throne over the water."[30]

Social justice is one of the core values and highest ideals of Islam. Tolerance and openness to questioning and dissent create an ambience where commitment to social justice can be meaningful. It is a contradiction in terms to speak of social justice in communities that neither welcome dissent nor allow for questions.

Denying the right to dissent and to ask questions drives people away, disempowers the community, and condemns its membership to being passive onlookers. The operational principle of respecting dissent and the imperative to develop dynamic communities necessitate an atmosphere in which diverse opinions can be expressed and where serious questions can receive respectful answers. The right to inquire and to dissent creates an organic system of checks and balances that helps guard against excess. Ultimately, the freedom to question and to disagree benefits the entire community; it holds both its members and its leadership accountable and requires them to meet reasonable standards of sensibility and discretion.

OPERATIONAL PRINCIPLE THREE
STRESSING SOCIETAL OBLIGATIONS

Although societal obligations are a fundamentally legal concern, the principles they embody are rooted in the nature of Islamic ethics and belief. Societal obligations are based on recognizing the sanctity of others and the importance of society. From an Islamic standpoint, good character and belief in God share a very similar conceptual framework.

Good character is predicated upon altruism: acknowledging the Other, being magnanimous toward the Other, and respecting the Other's rights. The primary ethical qualities — truthfulness, trustworthiness, gratitude, patience, generosity, humility, courage, and so forth — grow out of this implicit regard for other people and affirmation of their dignity, merits, and rights.

In Islam, belief is essentially transcendent altruism, God being the ultimate Other. The essence of belief in the Qur'an is gratitude (*shukr*). In Arabic, *shukr* comes from a root meaning to recognize the good of others and to respond to it openly and appropriately. Disbelief (*kufr*), which is the semantic opposite of *shukr*, comes from another root that means to know the good of others secretly but to deny it openly. Somewhat like good character, belief signifies acknowledgement of *the* Other (in this case, God), being grateful to Him, and showing Him the honor and glory He is due. Disbelief, on the other hand, means to apprehend God secretly but deny Him openly and refuse to thank Him or pay Him homage. For this reason, the Qur'an describes Satan as a "disbeliever" (*kāfir*) (Qur'an 2:34). According to Islamic teaching, Satan had in-

timate knowledge of God but rebelled against Him out of arrogance. In Islam, there can be no belief or disbelief without essential knowledge; the difference between belief and disbelief is essentially how one responds to that knowledge.

The Qur'an links belief with good character and the sense of moral obligation; it emphasizes the noble character and moral integrity of the Prophet and his Companions and indicates that their ethical qualities constituted the foundation of their belief in God and commitment to good deeds and the welfare of others. The Qur'an repeatedly connects disbelief with bad character, disregard for others, and callousness toward human suffering, especially as exemplified in the arrogance and oppression of the Meccan oligarchy.

The operational principle of societal obligations is backed by the consensus of Muslim scholars and is treated at length in works on Islamic legal theory; it constitutes one of the foundational elements of the Islamic faith. Stressing societal obligation is essential for building the American Muslim community. It provides a powerful religious impetus for social commitment and community development. It promotes civic consciousness and requires Muslims to identify with the broader community, address its needs, and enlist the human resources necessary to meet them.

In Islam, basic religious duties fall into two categories: individual obligations (*farḍ al-ʿayn* or *wājib al-ʿayn*) and societal obligations (*farḍ al-kifāya* or *wājib al-kifāya*). Individual obligations are binding on every Muslim who is morally responsible (*mukallaf*). They are exclusively personal and cannot be performed by someone else on another's behalf. The five daily prayers, fasting the month of Ramadan, and eating what is lawful and clean are individual obligations. Ethically, Muslims who fail to perform individual obligations are iniquitous and risk divine retribution.

Societal obligations are mandatory for the *entire* Muslim population taken as a whole; they represent the population's group responsibility to constitute an organic and responsible community. It is a societal obligation, for example, to ensure that people have basic necessities like food and health care. The principle of societal obligation stipulates that sufficient numbers (*al-kifāya*) of qualified men and women be morally required to carry out societal obligations on the community's behalf. By their nature, societal obligations necessitate cooperation and call for the development of communities that are functional, self-aware, and well organized.

> FOR THE AMERICAN MUSLIM COMMUNITY, SOCIETAL OBLIGATIONS REQUIRE THE PROACTIVE DEVELOPMENT OF NEEDED RESOURCES THAT ADDRESS REAL ISSUES ON THE GROUND.

Societal obligations generally cannot be performed without group effort because they are far more demanding than the individual capacity of persons working alone. For that reason, each societal obligation requires a sufficient number of people with community support to see that it is carried out. It is the community's responsibility as a whole to enlist such numbers of qualified people and assist them in the task. If the Muslim community neglects its societal obligations, *each* Muslim bears the moral responsibility for their failure as a group. *Each* member of the

community is iniquitous and personally risks divine retribution. Once a societal obligation has been adequately addressed, the corresponding group responsibility of Muslims falls from their shoulders, and the potential burden of communal sin is lifted.

The operational principle of stressing societal obligations shows that Islam is much more than a religion of personal pieties and that it cannot be narrowly restricted to the activities of mosques or Islamic centers. The performance of individual obligations like prayer and fasting never removes a Muslim's moral duty to meet societal ones. The most seemingly upright of Muslims are liable for divine retribution if they ignore societal obligations and content themselves with personal piety alone. At the same time, there must be no confusion; personal dedication to the community's needs does not remove a Muslim's individual obligation to perform acts of personal piety.

Individual obligations (prayer, fasting, and the like) can be readily identified and are performed at set times according to fixed forms. When missed, individual obligations can be made up later. A Muslim who is unable to fast compensates by fasting at another time or making atonement (*kaffāra*). Societal obligations, however, are more exacting and complex. They are often difficult to identify and even harder to fulfill. Societal obligations are situational and require intimate knowledge of the community and its immediate and future needs. Societal obligations do not have predetermined times, places, or procedures. The number of people required to carry out a particular societal obligation and the nature of qualifications those people must have are always determined by realities on the ground and are continuously liable to change. Unlike individual obligations, societal ones cannot be made up once their time has passed; they must be performed at the time and in the manner each situation requires. If a person is dying from starvation, it is of no use to bring food after that person has died. If a house is burning, the effort to extinguish the fire cannot be delayed until tomorrow.

Muslim legal theorists explain the primacy of societal obligations in Islam by virtue of their inseparable connection to society's welfare because they secure society's benefits (*maṣāliḥ*) and protect it from detriments (*mafāsid*). For the same reason, certain societal interests take precedence over others when the two clash. As a rule, individual interests may not be promoted at the expense of group interests. Broader societal interests take precedence over narrower group interests. For example, society's long-term need for affordable drugs takes precedence over the narrower personal and corporate interests that are met by selling them at unreasonable prices.

Societal obligations allow no Muslim to remain a passive spectator in the community. There is always work to be done, whether it pertains to urgent needs or more general requirements. Those who are not able or qualified to perform societal obligations must give material and moral support to those who are performing them. Muslims who are qualified to fulfill societal obligations must take part in them to the extent that they are able, but as before, the communal responsibility for failing to meet societal obligations falls upon both the qualified and the unqualified alike.

Basic societal obligations are expanded upon so that they include all related community responsibilities through the Islamic principle: "Whatever is necessary to fulfill an obligation is an obligation itself" (*mā lā yatimm al-wājib illā bihī fa-huwa wājib*). It is one of the ultimate obligations of Islam to protect human life (*al-nafs*), but the protection of

lives cannot be achieved without food, shelter, and security. The need to preserve life, therefore, gives rise to the societal obligations of providing food, shelter, security, and similar necessities. Thus, societal obligations extend from basic necessities to include *everything* that is essential to the community's best interest.

In earlier Islamic societies, the duty to implement most societal obligations fell on the shoulders of the state, although the moral responsibility for their fulfillment still included the entire community. Today, secular national and state governments meet many basic societal obligations, although they may not meet them equally well for all social and economic classes. The services they provide benefit Muslims as well as others; they exempt Muslims from the particular societal obligations that are covered but not from other societal obligations that the state fails to cover.

In pre-colonial Muslim societies, private persons established wide varieties of beneficial pious endowments (*awqāf*; *aḥbās*), often with societal obligations in mind. Their endowments met such general concerns as caring for widows and orphans, looking after the physical and mental health of prisoners, and even providing for the welfare of injured and decrepit animals. In the West today, Muslims have the communal duty to identify and implement societal obligations necessary for community growth, civic engagement, and environmental protection. It must be stressed that societal obligations are *not* the sole domain of activists and volunteers. Today as in the past, Muslim communities cannot meet their societal obligations without farsighted institutional development, including the establishment of religious endowments and the employment of well-trained professionals.

Societal obligations are largely forgotten in present-day Muslim lands and are rarely understood in developing Muslim communities like ours. Neglect of societal obligations, perhaps as much as anything else, accounts for the generally lamentable state of the Muslim world today. When Muslims focus exclusively on individual obligations and interests, they lose sight of Islam's social mission. They become the victims of an atomistic, one-dimensional mindset that is virtually incapable of critical consciousness and social awareness. As such, many Muslims have little ability to comprehend and have minimal incentive to participate in their community's preservation and growth, much less the concerns of the world beyond them.

For the American Muslim community, societal obligations require the proactive development of needed resources that address real issues on the ground, among which are better social services, professional marriage counseling, financial institutions, and the establishment of advanced Islamic seminaries. Our societal obligations also require us to address urgent issues that have surfaced in the American Muslim community over recent decades. The operational principle of societal obligation naturally requires candor in identifying problems; otherwise they cannot be solved. I will address three issues below that demand attention and constitute societal obligations of the first order: career choices, marriage, and liquor franchises.

Career Choices

All professions and fields of learning that serve the community's material and cultural needs fall under societal obligations. There can be no place in the community for elitism; any honest profession is a good profession. Whether a person is driving a taxi or working in a hospital emergency room, each livelihood helps serve a vital societal function. Too

often, however, our community's attitudes toward career choices and professions have everything to do with money and social status and little to do with our overall societal needs as a developing Muslim community in America.

Medicine, engineering, and a number of other well-paying fields are well represented, if not over represented in the American Muslim community. They have indisputable value, but the community's tendency to socially compartmentalize desirable careers within this limited range stultifies our future. Social sciences like psychology, sociology, and anthropology are often mistakenly regarded as less worthy because they are not as lucrative and do not afford elite status in our community. In reality, the social sciences play a critical role in modern society and constitute key priorities for American Muslims. They serve the community's essential interests in areas such as mental health, social welfare, and cultural development. Our ability to function effectively as Muslims in modern society requires a nuanced understanding of modernity. Such an understanding falls squarely within the competence of the social sciences. It is a primary societal obligation for American Muslims to develop sufficient cadres of well-trained social scientists whose research is not only of use to the Muslim community but is valuable to the greater society at large.

Specializations in the humanities like history, modern thought, philosophy, and literature are widely considered in our community as marginal, but they too are necessary and meet essential societal obligations similar to those of the social sciences. They impart a wider view of the world; how its past relates to its present and future; and the seminal ideas of our times. They give direct access to effective cross-cultural understanding and intellectual development and enable the community to take interpretative control of itself and its religion in a contemporary context.

Marriage

Among the most serious crises that face large segments of the American Muslim community today are the hurdles and unjustifiable difficulties that many Muslim women and men of marriageable ages confront when looking for suitable spouses. The problem is especially acute for women. It is familiar to women from immigrant families but is no less severe for African-American Muslim women. The crisis is undoubtedly complex. One of its major causes is the limited pool from which Muslim spouses are selected. Other reasons include problems that relate to economic class, ethnicity, and cultural background. In addition, Muslims do not generally allow dating, which for many people in the West is a prelude to marriage. American Muslims have yet to develop effective cultural alternatives that allow them, within Islamic norms, to negotiate gender interaction and facilitate marriage through practices such as courtship. The real and potential harms likely to result from the marriage crisis at the individual and community level are unimaginable. Facing the problem truthfully, as many Muslims already do, and finding solutions for it is an urgent societal obligation.

Liquor Franchises

One of the most serious social ills affecting the American Muslim community at present is the existence of thousands of liquor stores owned by immigrant Muslims in the nation's inner cities. Their presence threatens to undermine the gains that African-American Muslims made during the twentieth century through social engagement in

these communities. In Chicago and other American cities, the ubiquitous presence of Muslim-owned liquor franchises has been a source of tension and conflict.[31] For Muslims to operate such stores or to ignore their presence is much more than a violation of the Islamic code. The liquor stores harm the neighborhoods and families where they are located and generally cast all Muslims in a negative light. In the eyes of prominent Muslim and non-Muslim civic leaders, the Muslim-owned liquor businesses in the inner cities are a socioeconomic blight. It is a top-priority societal obligation that American Muslims address this problem more effectively and find a judicious solution.

OPERATIONAL PRINCIPLE FOUR
SETTING PRIORITIES

The Prophet Muhammad said: "There was no Prophet before me but that it was a duty for him to guide his nation to what he knew was best for them and warn them about what he knew was worst for them."[32] Aspiring for what is best and avoiding what is worst are the two primary goals of the Prophetic law. The eminent legal scholar al-ʿIzz ibn ʿAbd al-Salām summed up the entirety of Islam in one phrase: "To secure benefits and ward off detriments" (*jalb al-maṣāliḥ wa dar' al-mafāsid*).[33]

Focusing on benefits and detriments is part of the universal Prophetic legacy and, therefore, constitutes a categorical Islamic obligation. Understanding the importance of setting priorities is a necessary operational principle in Islam, but, as obvious as the principle may seem, many Muslims are oblivious to it in practice.

To help secure society's wellbeing, Islamic law sets three descending levels of priority, which rank benefits and harms according to their magnitude: *necessities* (*ḍarūriyyāt*), *needs* (*ḥājiyyāt*), and *complements* (*takmiliyyāt*). Each of them will be discussed in fuller detail below after first discussing the five major objectives of the law, upon which they are based. The three levels of priority draw distinctions between the various aspects of Prophetic law; they give highest priority to what is essential to society's wellbeing and lower priority to what is not. By setting priorities, Muslims are able to work toward their best interest in good times and bad by allocating time and resources to major needs without becoming preoccupied with minor concerns or with false priorities.

The Arabic words *maṣāliḥ* (benefits) and *mafāsid* (detriments) have a slightly different emphasis than their English counterparts, "benefits" and "detriments." In English, "benefits" may first bring to mind nonessential advantages and conveniences. Likewise, the word "detriments" often brings to mind disadvantages and inconveniences. The Arabic word, "*maṣāliḥ*" literally refers to what brings about wholeness, healthiness, and wellbeing. It immediately brings essential and useful needs to mind, although it includes nonessential advantages and conveniences as well. "*Mafāsid*" is the semantic pair of "*maṣāliḥ*." Like "good" and "evil" in English, mention of the one brings the other to mind. Linguistically, *mafāsid* refers to what causes corruption and decay. It immediately brings to mind fundamental harms and damages, including disadvantages and inconveniences.

Benefits and detriments are neither uniform nor abstract; they are inseparably tied to concrete circumstances and realities. Likewise, the imperatives of Islamic law are not equal regarding the im-

portance of their purposes and rationales. Without setting priorities, the ultimate purposes of Islam become obscured and disconnected from their social purpose. Determining priorities requires making difficult judgments about the magnitudes of diverse benefits and detriments in different contexts and the priority in rank of corresponding elements of the law. In Islamic law, the legal discipline that studies how to make such evaluations is called the Science of Counterbalancing (*ʿilm al-muwāzana*). Historically, the renowned jurists al-Shāṭibī and Ibn Taymiyya were foremost in this field.

Islamic law sets the three priorities according to a hierarchy of legal goals. The highest of them are the five major objectives (*al-maqāṣid al-khamsa al-kubrā*). They are the preservation of: religion (*dīn*), self (*nafs*), reason (*ʿaql*), children (*nasl/nasab*),[34] and wealth (*māl*). Some scholars add personal and family honor (*ʿirḍ*) as a sixth objective, but *all* agree on the main five. These five major objectives constitute the grand, all-enveloping rationales of Islam. They are the pivot point around which the most binding individual and societal obligations revolve. The primary goal of Islamic jurisprudence is to secure these objectives first or as effectively as possible before turning to lesser priorities. In Islamic legal theory, the five major objectives are critical to the welfare of all human societies, regardless of religion, because the erosion of even a single one of them threatens the continued existence of the society as a whole.

❖ Preservation of the religion entails everything that is necessary for sound Islamic understanding and practice. Each of the five operational principles in this paper falls under the imperative of preserving the religion. This major objective includes, for example, the creation of a wide variety of research and writing pertaining to Islam such as excellent English translations, commentaries, and literature relevant to our time and place. In America today, the preservation of the Islamic religion clearly necessitates the foundation of outstanding indigenous Islamic educational institutions.

❖ Preservation of the self means to protect human life from violence, sickness, starvation, and anything else that threatens it. Adequate housing, security, and health services are among the many priorities associated with this objective.

❖ Preservation of reason requires protecting the human mind from such harms as ignorance, insanity, and alcohol and drug addiction. On the positive side, it entails the full development of the human mind, which requires exposure to positive stimulation and good education.

❖ Preservation of children focuses on children but entails everything essential to the welfare of the family. It takes in marriage, parenting, caring for the disabled, and so forth. It necessitates guarding against social evils like the abuse of children, spouses, and the elderly.

❖ Preservation of wealth requires the creation of lawful wealth, its growth, and protection. It places economic development at the center of Islam's social project. It also necessitates protecting wealth from waste, destruction, and loss through theft, robbery, fraud, embezzlement, and other crimes.

Like societal obligations, the five major objectives extend to other concerns through the previously mentioned principle, "whatever is necessary to fulfill an obligation is an obligation itself." As illustrated above, preservation of the religion requires that the religion be properly taught, which cannot be done without competent religious scholars. Competent scholars cannot be produced without supe-

rior educational facilities. Therefore, it is a major priority to create exceptional Islamic educational institutions.

As indicated above, Islamic law has three levels of priority: *necessities, needs,* and *complements*. *Necessities*, the highest priority, are inseparably linked to the five major objectives. They are directly tied to the acquisition of indispensable benefits and the removal of critical harms. *Necessities* are matters without which individuals and societies cannot continue to exist, the most important of these being the five ultimate objectives. It is a necessity in cold climates, for example, to have basic shelter with heat and hot water. As mentioned, the arena of *necessities* expands to include everything required to meet the five major objectives. Clarifying what a community's *necessities* are makes it possible to determine the most urgent societal obligations.

Needs constitute the next level of priorities. They pertain to the acquisition of lesser benefits and the prevention of lesser detriments. *Needs* are closely related to *necessities* because they buttress them and make it easier to meet them and keep them intact. Unlike *necessities*, *needs* have secondary importance and are dispensable; a society that fails to meet its secondary needs can survive, but the quality of life it provides will be less than satisfactory. It is a *necessity* to have basic shelter with heat and hot water in cold climates; it is a *need* to provide the shelter with important nonessential appliances like dishwashers.

Complements are also referred to as "beautifications" (*taḥsīniyyāt*) and "ornamentations" (*tazyīniyyāt*). They pertain to minor benefits and detriments. *Complements* are closely related to *needs* in a manner similar to the relation of *needs* to *necessities*; *complements* make it easier to secure *needs*. *Complements* affect the quality of life by adorning it with elegance and sophistication; they also involve the removal of minor detriments like impoliteness. *Complements* are the refinements of a civilized society; they manifest private, family, and social life in their most excellent forms. Basic shelter is a *necessity*; important nonessential appliances such as dishwashers are a *need*; attractive interior decoration and a pleasant view constitute a *complement*.

Because *necessities* are absolutely essential, they must always take top priority, and the best resources and greatest efforts must be expended to secure them. As we have seen, *necessities* are the mainstay of society; *needs* support *necessities*; and *complements* support *needs*. Therefore, the attempt to meet *needs* must not be allowed to stand in the way of meeting *necessities*, and *complements* must not be emphasized to the exclusion of *needs*. Setting priorities in Islamic law means ordering *necessities, needs,* and *complements* so that the lower priorities support and do not work against the higher ones.

In ideal situations, *necessities, needs,* and *complements* exist side by side, but the realities of life and the nature of community development often make it impossible to secure all three together. In such cases, lower priorities must be traded off for higher ones. It is always imperative that the hierarchy of priorities be observed; *needs* and *complements* <u>must</u> be sacrificed for *necessities* when it is impossible to secure them all simultaneously. Likewise, *complements* <u>must</u> be sacrificed for *needs* when realities on the ground do not allow for them both. For example, it is a *necessity* to have Islamic seminaries, a *need* to provide scholarships, and a *complement* to find the best locations and provide aesthetically pleasing facilities. Yet the basic seminary project comes first; it must not be held

back because of difficulty in securing scholarships or finding an attractive campus.

Human activities rarely occur without the potential for bringing about simultaneous benefits and harms. When benefits and harms occur together, the hierarchy of priorities in Islamic law prohibits an act if its potential benefits are less than or equal to its potential harms. The relevant legal maxim states: "Warding off detriments takes priority over the acquisition of benefits" (*dar' al-mafāsid awlā min jalb al-maṣāliḥ*). Driving somewhere quickly may be beneficial, but it is forbidden in Islamic law if it involves speeding and risking a car accident; the supposed benefits of speeding do not outweigh the potential harms of an accident. But when potential benefits are greater than possible harms, the act is permissible and, in some cases, recommended or obligatory. When an ambulance speeds to the hospital to save the life of someone in critical condition, it runs the risk of an accident, but the benefit of saving the patient's life greatly outweighs the detriment of a possible accident.

Sometimes, there is no way to avoid a greater harm except by incurring a lesser one, and there may be no way to avoid a greater prohibition except by doing a lesser one. When this is the case, it becomes allowable and sometimes obligatory to choose the course of action that requires doing the lesser harm or the lesser prohibition despite the fact that neither is allowed. Eating carrion is detrimental to the health and strictly forbidden in Islamic law, but starvation is a greater harm and a greater prohibition. Therefore, the Qur'an directs the starving person to eat carrion or similar unclean substances to stay alive if there is nothing clean and permissible to eat.

The phenomenon of Muslim conferences and conventions in the United States and Canada offers an example of various benefits and detriments and how they may be ranked by priority. Organizing such gatherings constitutes a priority because they serve *necessities* such as helping to preserve the religion and develop the community. They fulfill many other individual and community *needs* such as providing access to scholars and new ideas. They provide for numerous *complements* such as meeting friends. Like most large gatherings, however, the conferences also fall short of expectations in certain regards. They may not be well organized; they may fail to give fair representation to all ethnic groups; and their programs may be superficial and repetitive. As a rule, however, the benefits of the conferences outweigh their detriments, and they remain a community priority and an important societal obligation.

> ACTIONS AND ACTIVITIES ARE NOT DONE FOR THEIR SAKE ALONE; IT IS NOT ENOUGH TO "GO THROUGH THE MOTIONS." WORKS MUST HAVE DIRECTION AND BE CARRIED OUT IN A MANNER THAT IS LIKELY TO ACHIEVE THE RATIONALES AND OBJECTIVES BEHIND THEM.

Misplaced priorities are a common stumbling block in the American Muslim community. Often, they grow out of simple unawareness that priorities are a part of the Islamic religion. In some cases, they result from the transferal of old world ways to the West without evaluating their utility in a new context. The allegation that speaking frankly about the community's problems is shameful or constitutes an attack upon Islam is deeply rooted in old world notions of shame and honor. Another cultural transferal is the emphasis

that some communities place on training children in the virtuous act of memorizing the Qur'an yet with little or no concern for teaching them Arabic and basic commentary so that they can benefit fully from what they memorize. Some imams do address the previously mentioned issue of Muslim-owned liquor franchises in the inner cities. Others may rail against false priorities like the supposed evils of Halloween and women wearing fingernail polish but avoid mentioning the Muslim-owned liquor businesses despite the fact that some of their biggest proprietors may be sitting before them in the congregation.

OPERATIONAL PRINCIPLE FIVE
EMBRACING MAXIMS

Each of the four preceding operational principles constitutes a single set of closely related concepts. The next operational principle, which is the chief concern of this paper, is somewhat different. Maxims are concisely stated principles of Islamic law and practical rules of thumb. Maxims number in the hundreds and represent an entire literary tradition in Islamic law. As an operational principle, embracing maxims does not mean learning them all; it is sufficient to know relatively few. But Muslims should be aware that this valuable resource exists and ought to make good use of it. Maxims provide an invaluable source of Islamic edification and guidance, which makes maxims a key component in the community's religious instruction.

Maxims are relatively easy to understand and have direct application to our lives. They are authoritative statements of Islamic law and constitute one of the most useful expressions of the ideals and general philosophy of Islam. Several of them have been cited in this paper already, such as "whatever is necessary to fulfill an obligation is an obligation itself." Maxims provide standards for making judgments, setting priorities, and deciding on courses of action. Each of them has numerous implications and applications, which may not be immediately apparent. In what follows, I provide a short introduction to maxims. Afterwards, I discuss the five core maxims, which sum up the fundamental purposes of Islam.

Some Qur'anic verses and certain Prophetic Hadith are expressed in a summary form similar to that of maxims; historically, these passages constituted the point of departure for maxim literature. The Qur'an states: "God wills to make things easy for you, for human beings were created weak" (Qur'an 4:28). The meaning of the verse is expressed in the core maxim: "Hardship must be alleviated." Another verse commands: "Accept from people what comes naturally. Command what is good by custom. And turn away from the ignorant without responding in kind" (Qur'an, 7:199). It is a textual proof for the core maxim "custom has the weight of law." The Prophet said: "Acts are judged only by intentions." It is reflected in the maxim: "Matters will be judged by their purposes." He said: "Harm will not be done to others, nor will harm be reciprocated with harm." It is a primary reference for the core maxim: "Harm must be removed."

Muslim jurists have relied on maxims from the earliest centuries of Islam till the present, and contemporary Muslim scholars place great emphasis on them. Legal maxims are an integral element in all schools of law, Sunnī and Shīʿī alike. All

Muslim scholars give legal maxims broad general endorsement, and, although they do not agree on each one of them, most maxims are supported either by consensus or general agreement. Probably, no other significant body of theological or legal principles in Islam enjoys such a high degree of authority and consensus as legal maxims.

THE FIVE CORE MAXIMS

The five core maxims (*al-qawāʿid al-kulliyya al-khams*) stand at the very center of the hundreds of other maxims in Islamic law.[35] Many prominent Muslim jurists hold that these five maxims embody the spirit of Islamic law in its entirety. As indicated in the introduction, to grasp the full utility of the five core maxims, the reader should continually bear in mind that they constitute a succinct summation of the operative wisdom of Islam. It is the purpose of the five operational principles in this paper to help Muslims realize their potential as individuals and communities through deeper understanding of their faith. The five core maxims constitute the bedrock of that understanding.

Each of the five core maxims is endorsed by the consensus of both Sunnī and Shīʿī scholars. Therefore, they transcend all schools and sects and constitute a reliable basis for building a pluralistic and enlightened Muslim community. The five core maxims are:

1. Matters will be judged by their purposes (*al-umūr bi-maqāṣidihā*).
2. Certainty will not be overturned by doubt (*al-yaqīn la yazūl bi-al-shakk*).
3. Harm must be removed (*al-ḍarar yuzāl*).
4. Hardship must be alleviated (*al-ʿusr yajlib al-taysīr*).
5. Custom has the weight of law (*al-ʿāda muḥakkama*).

Maxim One: Matters will be judged by their purposes.

This maxim emphasizes intention and purpose. Actions and activities are not done for their sake alone; it is not enough to "go through the motions." Works must have direction and be carried out in a manner that is likely to achieve the rationales and objectives behind them. As mentioned above, the maxim's wording is based on the Hadith: "Acts are judged only by intentions." The wording of the maxim is broader. "Matters" (*al-umūr*) includes intention-based personal actions, but the word also takes in general activities, institutions, policies, and the like, which are not based on intentions, but on purposes. The Arabic word for "purposes" (*maqāṣid*) applies to intentions as well as objectives and goals such as are pertinent to general activities, institutions, and policies.

The maxim emphasizes the importance of intentions in those human actions that require them. It immediately calls to mind acts of worship, because they are invalid without correct intentions. Customary actions, on the other hand, are valid without intentions, but good intentions can transform them into ethical deeds and even devotional acts. Habitual behavior like eating, drinking, and sleeping is morally neutral but may become ethical or devotional if done with the appropriate intentions. To rest is morally neutral; taking rest with the intent of renew one's strength to earn a livelihood to support a family is an ethical act. Running a legitimate business is morally neutral; if it is done with the motive of helping to support a worthy spiritual end, it becomes an act of worship. Bad intentions have the opposite effect. For example, it is praiseworthy to visit Mecca and Medina, but the intention to go there in order to beg or steal turns the outwardly commendable act

into a deplorable one. Some actions are ambiguous and can only be judged by the motives behind them. The Prophet said: "Whoever imitates a people belongs to them."[36] The Hadith uses the verb "*tashabbaha*" (to imitate) instead of a related verb from the same root but with a different vowel pattern, "*tashābaha*" (to resemble). The former verb, "to imitate," stresses psychological motivation, especially the need to imitate a group other than one's own in order to be acceptable in their eyes. It reflects lack of self-esteem, feelings of inferiority, and a confused sense of identity.

As scholars have observed, it is notable that the Hadith does not use the latter form of the verb, "to resemble," because it would have fundamentally changed the meaning. The verb "to resemble" would have indicated that the mere act of being similar to others is disallowed, which is the mistaken interpretation that some Muslims give to the Hadith. By avoiding the latter verb, the Hadith shows that there is no harm in merely looking like others, as long as the act is not associated with the negative inward qualities indicated by the verb "to imitate." If a Muslim is motivated to wear the clothing of another people and imitate their customs out of a sense of inferiority, it is reprehensible. It is a different matter altogether when one wears the same clothing with self-esteem and the intention of being a functional member of society.

For most human activities and undertakings, intentions are not essential but rationales and purposes are. When the maxim "matters will be judged by their purposes" is applied directly to actions that are not intention-based, it emphasizes the importance of the rationales, ultimate objectives, and even unintended consequences. Actions must be judged by the purposes they were meant to achieve. Any action, however well intended, falls short of what it ought to be if it is carried out incompetently or fails to meet its objective for some other reason; acts are stillborn when done as mere formalities.

As we have seen, good intentions transform mundane individual acts into ethical or devotional ones. Likewise, actions and activities may appear of little value but take on immense importance if they are directed toward beneficial ends. Simple amusements, like bowling parties and casual get-togethers to watch sporting events, might have been considered frivolous in certain traditional Islamic settings. In the American Muslim community today, however, they constitute positive alternative pastimes. The maxim "matters will be judged by their purposes" does not signify that good ends justify evil means. According to Islamic law, the means and the ends must *both* be legitimate. It does emphasize, however, that laudable means are not laudable in and of themselves. They must be consciously directed toward their purposes.

Ibn Taymiyya indicates that the scope of this maxim includes the moral responsibility that persons and groups bear for the unintended consequences of potentially detrimental actions when those consequences are predictable and could have been avoided. The Companion Samura ibn Jundub had an obese son, who would not follow his advice to eat in moderation. The Prophet indicated to Samura that if his son did not control his eating habits and died from obesity, his death would be tantamount to suicide.[37]

The Armistice of Ḥudaybiyya, which the Prophet concluded with the Meccan idolaters in the sixteenth year of his prophecy, provides a useful illustration of how matters can only be fully evaluated in the context of their purposes and outcomes. The precedent set by this accord

contrasts sharply with the human tragedy common to many armed conflicts when resistance and intransigence become ends in themselves and prevail against reason, peace, and the preservation of public welfare.

Initially, the Armistice of Ḥudaybiyya appeared to be a defeat for the Muslims and an incomprehensible setback for their cause, but its outcome soon revealed the Prophet's purpose and showed the treaty to be one of his greatest achievements. At the time of the treaty, the Meccan idolaters had become weak, and the Prophet was in an unrivalled position of strength; he could have easily defeated the Meccans militarily. Instead, he concluded a ten-year pact of peace with them. The Meccans insisted, however, upon putting disrespectful language and demeaning concessions in the treaty. For many of the Prophet's Companions, his acceptance of the treaty came as an immense shock. They took it to be an insufferable insult to the Prophet and Islam; for many of them, the treaty severely tried their faith. But the Qur'an proclaimed the armistice a manifest victory (Qur'an, 48:1). One of the Companions approached the Prophet and asked: "Messenger of God, is it truly a victory?" He replied: "Yes. By God, in whose hand is my soul, it is a victory."

The Armistice of Ḥudaybiyya created an atmosphere of reconciliation and released all clans from earlier tribal alliances. The Arabs were now free as individuals to listen to the Prophet's message and assess their personal stances toward it without the danger of violating kinship loyalties. The treaty also granted the Muslims access to Mecca, which gave their faith greater legitimacy in Arab eyes. Within months, the consequences of the armistice revealed the farsightedness of the Prophet's decision. It established a *pax islamica* in Arabia and began Islam's meteoric rise. Al-Zuhrī, one of the teachers of Imam Mālik, wrote:

> No victory in Islam prior to Ḥudaybiyya was anything like it. Before, people would fight whenever they met. After the armistice, war was suspended. People were no longer afraid of each other. They would meet, speak, and argue at great length. No one with the power to reason was spoken to about Islam but that he embraced it. In those two years before the Meccans broke the armistice, the people who entered the faith were equal to the number of all those who had embraced it during the preceding sixteen years.[38]

As much as any other operational mechanism, the maxim "matters will be judged by their purposes" constitutes a clear directive that Muslims live Islam with purpose. It sets a standard by which present activities in the Muslim community must be reassessed and future undertakings planned and carried out.

Maxim Two: Certainty will not be overturned by doubt.

This maxim means that knowledge based on valid experience and strong evidence must not be overturned by weaker considerations. It embodies the principle in the Qur'anic verse: "And do not follow that of which you have no true knowledge" (Qur'an 17:36). It is also illustrated in the Hadith: "If any of you has doubts during his prayer and no longer knows whether he has prayed three or four prayer units (*rakaʿāt*), let him cast doubt aside and complete the prayer by adding to what he is certain that he did."

The maxim "certainty is not overturned by doubt" embodies the first operational principle stated in this paper: trusting reason. It is also in harmony with the second operational principle of respecting dissent because it recognizes the priority of stronger proofs over weaker ones. The

maxim sets a basic rule for how to use the mind in making sound judgments. This maxim hones the power of reason and breaks the hold of illusions and unfounded speculations. Failure to live by this maxim does a disservice to the human mind and eventually harms it. Ultimately, "certainty is not overturned by doubt" embodies the Islamic conviction that truth, as varied as its paths are, is not a function of arbitrary will or subjective perceptions and must be discerned through objective criteria.

"Certainty is not overturned by doubt" is more about basic proof and the resolution of conflicting claims than it is about categorically authoritative certainty such as was discussed under the second operational principle on respecting dissent. "Certainty" in this maxim includes but is not restricted to categorical proof. In this maxim, "certainty" is broader and includes reasonable opinions based on presumptive authority or strong conjecture. In its application, the maxim "certainty is not overturned by doubt" requires that reasonable and well-established convictions be respected and not disregarded unless there is stronger evidence to the contrary.

One of the maxim's most important applications is "the presumption of continuity (*istiṣḥāb*)." The presumption of continuity holds that things must be presumed at present to remain in their former states until the contrary is proven. Here again, "certainty" does not just apply to categorical knowledge but takes in matters of presumptive authority or strong conjecture. Even though a reasonable opinion may not be conclusive, it must be treated as if it were conclusive until the contrary is demonstratively proven.

Like many other legal systems, Islamic law upholds the principle that people are innocent until proven guilty. For Muslims, the presumption of innocence is a corollary of "certainty is not overturned by doubt." More specifically, the presumption of innocence is a version of the presumption of continuity, which falls under the core maxim. The Islamic revelation teaches that human beings were created in a state of natural innocence and basic goodness. Their original condition of innocence makes guilt the exception to the rule. Therefore, people must be presumed to remain at present in their former state of innocence until the contrary is proven. Likewise, the reputations of people must be defended against rumors unless valid evidence proves them true.

> A RELIGIOUS PSYCHOLOGY NARROWLY MOLDED BY LISTS OF DO'S AND DON'TS IS GREATLY HANDICAPPED. MUSLIMS WITH SUCH AN IDENTITY STRUGGLE NOT TO FEEL ALIEN OR OUT OF PLACE IN SURROUNDINGS WHERE THEIR LIST OF DO'S AND DON'TS IS NOT SHARED.

Another common application of "certainty is not overturned by doubt" is "the presumption of permissibility." The presumption of permissibility holds that things must be presumed to be permissible unless the contrary is proven. Ibn Taymiyya asserts that none of the early authorities of Islamic law is known to have questioned the validity of the presumption of permissibility.[39] Another closely related maxim holds that things must be regarded as permissible unless proven harmful. A similar maxim, "the presumption of cleanness," states that all things will be presumed to be ritually clean

(*ṭāhir*) unless the contrary is proven.[40] These and related maxims are based on the Islamic belief that the world was created for human stewardship. Thus, the world and all that it contains are generally good, beneficial, and ritually clean. As a natural consequence, permissibility is the rule, and impermissibility, harmfulness, and ritual uncleanness are exceptions.

The presumption of permissibility is crucial for the personal growth and community development of Muslims in the United States. Some Muslims regard Islam as little more than a list of do's and don'ts, and, generally, the don'ts outnumber the do's. When Islamic identity is behaviorally defined in this fashion, it fosters a psychology permeated with debilitations, inhibitions, and narrow cognitive frames; prohibition is made Islam's default position, and the religion is given the appearance of permitting very little and prohibiting everything else.

The presumption of permissibility emphasizes that the reverse is true; Islam's real default position is one of general permissibility with an affirmative attitude toward the world. The basic rule of general permissibility does not mean that the clear prohibitions of Islamic law are discarded. In fact, it lays stress on the fact that prohibitions in Islam are grave matters and must not to be taken lightly. Because prohibitions *are* grave matters, they demand cogent proof based on sound knowledge, not on hearsay, misgivings, or inhibitions. Ibn Taymiyya adds in his discussion of the presumption of permissibility that it is reprehensible for a Muslim to be preoccupied with the minutiae of what may or may not be forbidden or to be obsessed with constantly asking about them.[41]

Since presumption of permissibility is the dominant rule, Muslims are not required to prove that things are permissible; only claims of prohibition demand proof. Today, many Muslims take it lightly to declare things forbidden; the opposite was true for the Companions and the authoritative voices of Islamic law. Their inhibition, to the extent that they may be described as having inhibitions, was to pronounce things forbidden unless they were not already clearly known to be so. When the great legal scholars of the past took the decision to classify something as forbidden based on personal interpretation, they based their arguments on conclusive evidence, and even then they made their decisions with marked hesitation.

A religious psychology narrowly molded by lists of do's and don'ts is greatly handicapped. Muslims with such an identity struggle not to feel alien or out of place in surroundings where their list of do's and don'ts is not shared. They not only have problems relating to non-Muslims; ironically, it is often even more difficult for them to interact with other Muslims who do not conform to their way of thinking. In reality, laws, behavioral standards, and even reasonable lists of do's and don'ts *are* part the Islamic ethos, but they must have their foundation in sound knowledge, core values, and universal principles like those epitomized in the five operational principles. When Islamic identity is based on core values and universal principles within the parameters of acceptable behavior, it is empowered to function with self-confidence anywhere and with anyone: it ceases to be psychologically vulnerable in diversity and becomes receptive to the broadest cognitive frames.

Issues such as recognizing the Constitution, voting, or accepting women as community leaders, speakers, and active participants in the mosque and other public venues are controversial in some communities. These matters are probably not problematic for most Muslims in America, but there

are those who regard them as questionable or even forbidden. The presumption of permissibility makes it clear that endorsement of matters such as these requires no proof of permissibility. The burden of producing definitive scholarly proof always falls exclusively on the shoulders of those who question their permissibility. Embracing the American Constitutional legacy, empowering women, and removing the remnants of patriarchy,[42] however, are not actually questions of permissibility; they are societal obligations of the highest order.

The question of gender and patriarchy raises broader concerns. Islamic educational institutions in the United States and elsewhere must create the mechanisms needed for producing Muslim women who are fully qualified Islamic scholars. Gender related questions including those mentioned above should not be delegated exclusively to male authority; more significantly, *no* question should be delegated to men alone. Muslim women must have opportunities equal to their male counterparts in all concerns. The disempowerment of Muslim women is a major reason for the retrogression of many Muslim societies. Degradation of the status of women has the same debilitating effect on Western Muslim communities that countenance it, and it must be corrected. Islam has a rich legacy of accomplished and actively engaged women. Great Muslim women excelled as political and military leaders, poets, scholars, philanthropists, spiritual guides, and in other capacities. Renewal of their legacy is essential for the future of Muslim communities everywhere.[43]

An excellent example of an empowered and empowering Muslim woman is the elegant twelfth-century scholar Fāṭima bint Muḥammad al-Samarqandi[44] of Syria. Her father was a preeminent Ḥanafī jurist and took active part in his daughter's education. Fāṭima became widely renowned for her own knowledge. She mastered Ḥanafī jurisprudence and the sciences of Hadith; her legal judgments (*fatwā*s) and transmissions of Hadith were held in the highest regard. Fāṭima also excelled as a teacher of the various Islamic sciences. She instructed men as well as women, and students traveled to Syria to learn from her and receive their scholarly credentials.

Fāṭima al-Samarqandī was a personal counselor of Nūr al-Dīn Zangī. Nūr al-Dīn is counted among the most significant rulers in Islamic history; he is remembered primarily for preparing the ground for the success of his vassal Ṣalāḥ al-Dīn (Saladin) a few years after his death. Fāṭima was renowned for her beauty and was widely regarded as the most beautiful woman of her time. Kings and princes unsuccessfully sought her hand in marriage. She chose instead to marry one of her father's students, al-Kāsānī, who is ranked today among the most brilliant Ḥanafī jurists. Fāṭima chose him because of a commentary he wrote on one of her father's principal legal works. Al-Kāsānī's commentary, *The Most Marvelous of Beneficial Things* (*Badāʿi al-Ṣanāʿi*), constituted his marriage gift and is one of the classics of Islamic jurisprudence. Few if any works in the Ḥanafī school show greater attention to the rationales and ultimate purposes of the law. Although al-Kāsānī ranks among the most competent of jurists, it was Fāṭima who corrected and edited his legal opinions. His esteem for her was so great that he would not sign the legal opinions he issued until Fāṭima signed them first.[45]

Maxim Three: Harm must be removed.

This maxim is central to the operational principle of setting priorities. As noted earlier, the essence of

Islam is to secure benefits and ward off detriments. By only mentioning harm and not benefit, the wording of this maxim stresses the priority of removing harm; as indicated earlier, the imperative to ward off detriments takes priority over the acquisition of benefits when the two are mutually incompatible. Considerations of harm and benefit are always mutually linked in Islamic legal reasoning; therefore, although the wording of the maxim "harm must be removed" does not mention benefit specifically, the concept of benefit is still implicitly understood. Omission of the word "benefit" not only emphasizes the importance of warding off harm, it implies that the acquisition of real and lasting benefits is not possible until harms are removed first.

The principle underlying this maxim is reflected in Qur'anic verses including: "Do not hold your wives in bondage, seeking to harm them; that would be transgression" (Qur'an 2:231). Another verse emphasizes: "No woman bearing a child shall be caused harm because of her child, nor shall any father to whom a child is born be caused harm because of his child" (Qur'an, 2:233). The Prophet said: "Harm will not be done to others, nor will harm be reciprocated by harm." Another Hadith states: "Harm will not be removed by a similar harm." And the Prophet taught: "Fulfill the trusts that you have been given; do not deceive a person who has deceived you."

This maxim "harm must be removed" obliges Muslims, in the name of their religion, to identify harms and remove them. It leaves Muslims no justification for ignoring or tolerating harm and injustice in their midst. By emphasizing the necessity of removing harm, the maxim grants priority to the victims of harm, injustice, and oppression. The right of victims is always legitimate, and the harm that afflicts them must be redressed.

In the Prophetic law, all that is harmful, from harm's greatest to its least manifestations, is unacceptable and must be removed. Muslim legal scholars define harm in broad terms; if the law should err when determining what constitutes harm and what does not, it must err on the side of leniency and inclusiveness. Another relevant maxim states: "Need will be put on the level of necessities" (*al-ḥāja tunzal manzilat al-ḍarūrāt*). When applied to the definition of harm, this principle implies that lesser harms, the removal of which technically falls under the heading of *needs*, are to be regarded as greater harms, the removal of which falls under *necessities*. Therefore, when there is doubt about the severity of a particular harm, it is not required that the victim of that harm prove how severe the harm actually is and whether or not it is actually a *necessity* to remove it or a *need*. If a spouse is being abused, for example, the spouse is not required to establish that the degree of abuse is greater and not lesser. Even if the harm were actually of a lesser degree, it must be treated as a greater harm, and it must be removed.

Many challenges currently facing the American Muslim community constitute real or potential harms; their removal is a definite societal obligation. It is harmful to the community when, for example, mosques promote atmospheres that are narrow-minded and uninviting. As previously mentioned, the difficulty many American Muslims face in finding suitable spouses is a great harm, as are dysfunctional marriages and domestic abuse. It harms the community when solutions are not found for disadvantaged Muslims who have no access to good education, cannot find adequate employment, or whose communities lack viable economic infrastructures.

This maxim "harm must be removed" has

obvious applications in the wake of the atrocity of 9/11, which brought with it new dangers and revived old ones. On the one hand, the maxim forces Muslims to acknowledge honestly the real and present danger of extremism and ensure that their communities remain free of it. On the other hand, the maxim makes it imperative for American Muslims to increase outreach programs and forge stronger alliances with supportive individuals and groups who have concern for human rights. The maxim also requires proactive steps through civic engagement, media, and other means to give Muslims a human face, bring to light their contributions to American society, and to help avert the potential harms that arise from dehumanization and misinformation.

Maxim Four: Hardship must be alleviated.

To understand this maxim, it is necessary to know that the word "hardship" used in it is not the same as "difficulty." Unlike hardship, difficulty is not necessarily bad; success in life does not come without difficulty and hard work. Moral responsibility (*taklīf*), which is the basis of Islamic religious obligation, literally means in Arabic "imposition of a heavy burden" due to the fact that acts of worship and other religious duties require some degree of difficulty.

Hardship, as referred to in this maxim, excludes *beneficial* difficulty like that required for training, study, work, and worship. Islam places high value on purposeful exertion but requires the alleviation of detrimental difficulty. The preceding maxim, "harm must be removed," emphasizes elimination; harm must be eliminated, not necessarily replaced with something else. The focus of this maxim is different; hardship must not just be eliminated; it must be replaced with something better. "Hardship must be alleviated" often requires the creation alternatives, because alternatives are the means by which alleviation takes place. In many cases, it may not be desirable to eliminate completely a type of behavior that is causing hardship; it may be better to modify that behavior or create alternatives, so that it or something better than it may be done in a manner that is easier and more rewarding.

The Qur'an states: "It is not God's will to cause you distress; rather, it is God's will to make you pure" (Qur'an 5:6). It says elsewhere: "God wills to make things easy for you, for human beings were created weak" (Qur'an 4:28). The Prophet stated: "Make things easy, and do not make them hard. Give people words of good news, and do not drive them away." He also said: "The essence of this religion of Islam is ease; no one goes to extremes in this religion but that it will get the better of him. Seek to do what is right. Try to get as close to what is right as possible, and give people good news." A third Hadith relates that the Prophet said: "If I command you to do something, do of it what you are capable of doing."

For some Muslims, Islam does not seem authentic if it is not hard. Occasionally, they adopt unnecessarily rigorous positions that push their psyches to the breaking point. Yet the Prophet made it clear that Islam is a religion of ease and that suffering for the sake of suffering is not laudable and does not please God. The Prophet preferred choosing the easiest way to do things; an authentic Hadith reports that: "The Prophet was never given the choice between two good things, one of which was easier than the other, but that he chose the easier of them." The Prophet said: "Certainly, the best part of your religious practice is what is easiest for you."

The difference between removing harm

(the previous maxim) and alleviating hardship (this maxim) is essentially a matter of degree. As demonstrated in the maxim "harm must be removed," Islamic law defines harm to include lesser harms. When the broad definition of harm is applied to lesser harms, the two maxims tend to overlap. Taken together, they testify to Islam's commitment to reasonable norms that are free of harm and filled with benefit as much as possible.

The following examples illustrate how the alleviation of hardship and the removal of (lesser and greater) harm may overlap. The illustrations pertain to the allowances Islam makes for Muslims to break the obligatory fast of Ramadan. Muslims are not required to fast when traveling, although in some cases fasting during travel is easy; in such cases, the law's alleviation of hardship is extremely broad and takes in even the most minimal forms of difficulty. Islam removed the obligation of fasting from people who lack the capacity to fast due to infirmity, pregnancy, and similar reasons. In safer cases, the license to break the fast under these conditions constitutes an alleviation of hardship; in more serious ones, it constitutes the removal of (lesser or greater) harm, depending on the degree of severity. In the following case, allowance to break the fast was clearly an instance of removing greater harm. When one of the Prophet's Companions would attempt to fast the month of Ramadan, he would fall unconscious and froth at the mouth; the Prophet exempted him altogether from fasting and directed him to feed one poor person for each day of the fast.

Islamic law instituted numerous other religious licenses to lighten hardship; the principles underlying each of them demonstrates the pliability of the law and the underlying principle that hardship for its own sake is undesirable. In extreme cold or the absence of water, Muslims are allowed to purify themselves ritually by contact with clean earth (*tayammum*). Travelers are allowed to combine prayers, and the Prophet gave special permission to perform the sunset and night prayers together on rainy nights or when the streets are muddy following rains, although ordinarily each prayer must be performed at separate times. The Prophet gave two of his Companions special permission to wear silk (although silk is otherwise forbidden for men) in order to alleviate skin irritations. Under normal circumstances, Muslim men are not permitted to wear gold, but Islamic law gave men permission to fill dental cavities with gold to alleviate the hardship of using other materials, which, in earlier times, did not make good fillings.

> ISLAM IS NOT CULTURALLY PREDATORY, AND IT TEACHES MUSLIMS TO LOOK UPON ALL CULTURAL HERITAGES WITH AN OPEN MIND, ESPECIALLY THOSE WHERE THEY LIVE AND TO WHICH THEY BELONG.

For centuries, prayer times were determined by the movements of the sun and the indications in the sky of dusk, night, and dawn. Today, urban areas are lit at night and buildings often block out the sky. Traditional methods of determining prayer times are no longer easy; in some cases, they have become impossible. To alleviate this hardship, most Muslims today rely on prayer timetables. When flying, it is widely regarded as permissible to pray in one's seat by making minimal gestures indicative of prayer and without needing to face toward Mecca. Given the length of urban commutes

in large cities, some scholars allow commuters to combine prayers, although the distances they drive may fall short of the definition of travel in Islamic law. Finally, the maxim "hardship must be alleviated" sets a critically important standard for new or lapsed Muslims; only the most basic obligations should be expected of them, and the transition should be gradual and undemanding.

Maxim Five: Custom has the weight of law.
This maxim is the theme of the Nawawi Foundation Paper "Islam and the Cultural Imperative," which illustrates the importance of culture in Islam and the imperative that Muslims in America create their own distinctive indigenous culture.[46] The maxim "custom has the weight of law" affirms that Islam is not culturally predatory, and it teaches Muslims to look upon all cultural heritages with an open mind, especially those where they live and to which they belong.

Once, a group of Ethiopian converts began to dance with drums and spears in the Prophet's mosque in celebration of an annual Islamic festival. The Companion 'Umar attempted to stop them, but the Prophet intervened and urged them to continue. In one Hadith, he said to them: "Play your games, sons of Ethiopia, so that the Jews and Christians know that there is flexibility (*fusḥa*) in our religion." By this and similar acts, the Prophet set the precedent of affirming cultural differences and made it clear that, for non-Arabs, entering Islam did not require them to give up their own cultural norms for those of the Arabs.[47]

The Qur'an revealed the following verse to the Prophet on the eve of his migration to Medina, where his legislative activity began. It establishes several primary legal principles, acceptance of culture being one of them: "Accept from people what comes naturally for them; command what is good by custom; and turn away from the ignorant without responding in kind" (Qur'an, 7:199). The Prophet's attitude toward ethnic and cultural identity provides an example of the application of this verse. He did not destroy the indigenous cultures and subcultures of pre-Islamic Arabia,[48] rather he lived in harmony with them, correcting what was unsound and repealing what was degenerate. Perhaps, the best example of the Prophet's accommodation of Arabian subcultural norms was his practice of propagating the Qur'an in the seven principal dialectical variations (*aḥruf*) of Arabic. Throughout Arabia, the Arab tribes understood the Meccan dialect of the Prophet's tribe, Quraysh, which served as the linguistic standard for all. The Prophet's use of the seven dialectical variations was not a necessity; it was a respectful gesture toward the Arab tribes, which acknowledged the integrity of each tribe's cultural identity.

The Prophet's attitude toward the cultural norms of the Arab tribes and other ethnic groups constitutes a major precedent and a basic standard in Islamic law. Because the Prophet gave broad endorsement to diverse cultural conventions and did not alter them except when necessary, Abū Yūsuf, the principal student of Imam Abū Ḥanīfa, regarded Islam's openness toward other cultures as the Prophet's Sunna. Abū Yūsuf's position contrasts sharply with certain Muslims today who regard the Sunna (narrowly defined as certain details of dress and personal behavior) as a substitute for culture.

Islamic legal theory regards sound cultural norms as constituting an independent and authoritative source of Islamic law. The noted Ḥanafī jurist al-Sarakhsī stated: "Whatever is established by good custom is equally well

established by sound legal proof." Al-Tusūlī, a prominent Mālikī judge and legal scholar, wrote: "It is obligatory to let people follow their customs, usages, and general aspirations in life. To hand down rulings in opposition to them is gross deviation and tyranny."[49]

The word "custom" (*ᶜāda*) as used in the maxim "custom has the weight of law" refers to acceptable cultural norms. Jurists define their usage of the word "custom" as "matters that are firmly established in practice and frequently repeated in people's lives and acceptable to sound natures (*al-ṭibāᶜ al-salīma*)." Reference to "sound natures" is linked to the Islamic belief that human beings are created with sound natures; humans are intrinsically good and endowed with basic intuitive knowledge of God, good and evil, benefit and harm. In a normative state, human beings adopt cultural norms suitable for themselves and the particular circumstances, times, and places in which they live. Thus, the basic purpose of cultural conventions is to obtain benefits and ward off harms to the furthest extent possible in widely divergent contexts. From the perspective of Islamic law, the nature of indigenous cultures and subcultures is fundamentally linked to the wellbeing of the social groups that have adopted them. For this reason, Muslim jurists regard Islam's endorsement of diverse cultural norms as an instance of its overriding commitment to acquiring benefits and protecting from harms.

Cultural conventions make up a fundamental part of identity and have a strong hold over people accustomed to them. Islamic law acknowledges this reality and expresses it in the form of the legal maxim: "Custom is second nature" (*al-ᶜāda ṭabīᶜa thāniya*). Customs are so deeply ingrained in people that it is difficult to distinguish them from their intrinsic natures. Therefore, it is all the more wise, from the standpoint of the law, to leave customs unchanged in so far as possible. Changing customary conventions unnecessarily is detrimental, because of the strong connection between customs and societal needs. When unhealthy customs must be altered or repealed, the process requires wise strategies and must be given time. Here again, the Prophet's example sets the precedent; he brought his Companions into full compliance with Islamic norms gradually through a process that lasted more than two decades.

Some Muslims challenge the validity of indigenous customs by citing the Hadith mentioned earlier: "Whoever imitates (*tashabbaha*) a people belongs to them." As noted, the Hadith condemns the servile imitation of others; it does not condemn healthy cultural interaction or the mere act of resembling (*tashābaha*) other people. The value of such interaction is especially clear when it is done for laudable reasons like living with others harmoniously and building bridges of understanding and cooperation. Furthermore, it is indisputable in the light of a body of authentic Hadith that the Prophet himself often wore various types of non-Muslim clothing that were given to him as gifts from Byzantium, Yemen, and other distant regions.

When introduced to this maxim, "custom has the weight of law," some American Muslims have anxieties about which indigenous customs are acceptable and which are not. In certain cases, their response reflects the culture of inhibition in which many of them grew up and the general presumption of prohibition common to that culture. It should also be noted that the word "culture" has taken on a pejorative meaning for many Muslims in America, especially those who come from immigrant families.

For them, the word "culture" is often associated with the old world folkways of their parents, certain aspects of which they may deem to be "un-Islamic," in conflict with American norms, or otherwise unacceptable.

"Custom has the weight of law" cannot be invoked to repeal what is clearly obligatory or prohibited in the Prophetic law, and the law categorically repudiates detrimental and degenerate customs. But, as has been seen, Islamic law takes an open-minded attitude toward customs in general, and, when judging cultural norms, it prefers to err on the side of leniency and not rigidity. The presumption of permissibility also applies to indigenous customs; customs too must be presumed acceptable until proven otherwise. A relevant maxim states: "Permissibility is the basic rule in customs" (*al-aṣl fi al-ʿādāt al-ibāḥa*). As before, the burden of proof that a particular customary convention is impermissible falls exclusively on those who repudiate it, not on those who affirm it. Nevertheless, in borderline cases, the law prefers to err on the side of lenience. The applicable maxim in this regard states: "The basic rule in customs is exemption" (*al-aṣl fī al-ʿādāt al-ʿafw*), meaning that they are exempt from blame.[50]

Accommodation of indigenous cultures made it possible for Islam to lay indigenous roots wherever it spread on the continents of Africa and Eurasia. Muslims learned new weights and measurements. They adopted and enriched local languages. In addition to the Islamic lunar calendar, Muslims adopted solar and astral calendars to determine the seasons and the best times for planting and harvest. They designed distinctive styles of dress; the long one-piece garment (*thawb*) and many other items of clothing that some Muslims today call "Sunna" are largely cultural products and differ significantly from the dress of the Prophet and his Companions. Muslim cultural genius is still reflected in simple things like the ways they receive guests and prepare food and in grander achievements like the production of regional styles of art and architecture.

Throughout the pre-modern period, local expressions of Islam bore witness to indigenous cultural creativity. When Islam entered Indonesia, Muslims found that the standard Islamic call to prayer (*adhān*) did not always serve its purpose. The human voice could not carry well in the dense Indonesian rain forests. Muslims adopted the local cultural convention of communicating through "talking" drums. They preserved the Sunna of making the prayer call but complemented it by using enormous drums, which they hung horizontally outside their mosques and beat loudly to call people to prayer. The deep, hollow sounds of the drums resonated through the forests. The drum beats signified that the place from which their sound came was empty and needed to be filled; people stopped what they were doing and came to prayer.

In many parts of Indonesia, Muslims worked in rice paddies and came to the mosques with muddy

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feet. Instead of repeatedly reminding the rice farmers to clean their feet before entering the mosques, indigenous architects constructed shallow pools in front of the mosque entrances. The farmers could not enter the mosques without walking through them, which cleaned their feet. But the standing water in the pools created the potential hazard of becoming habitats for mosquitoes and other insects. So the pools were also used to breed carp; the fish ate the insect larvae, and the people ate the fish.

In speaking about creating an indigenous Muslim culture in the United States, it must be emphasized that such a culture would not be a single, monolithic whole, nor would it necessarily develop along the lines of the dominant culture or any particular subculture. American culture, like human cultures everywhere, is not a single uniform entity. It is a complex of many diverse cultures and subcultures coexisting. They complement and compete against each other and have the same relation with the dominant culture of the mainstream. Endorsement of American culture means being open-minded toward all the multiple expressions of the indigenous cultural heritage. As emphasized before, the maxim "culture has the weight of law" disallows outright rejection of any of cultural or subcultural legacy; the maxim allows American Muslims to adopt or to adapt what they like from what they like as long as it is not detrimental. Our attitude should remain consistent with Islam's default position that customs are presumed to be permissible, beneficial, and good until proven otherwise; in borderline cases, we have recourse to the maxim "the basic rule in customs is exemption."

In traditional Muslim societies, creative adaptation of indigenous norms was conspicuous and often more beneficial than mere adoption of them. Likewise, American Muslims need not be content with just adopting good cultural norms; it is often better to adapt them imaginatively in order to produce results that are *more* beautiful and *more* beneficial than what existed before. In this regard, noteworthy achievements have already been made in areas like music, poetry, comedy, journalism, fiction, non-fiction, fashion, and interior design.

One of the most significant cultural challenges before American Muslims is to design truly indigenous styles of American mosques. The American mosque should not have a single set form. As stated above, American culture is multiplex; American mosques must reflect that complexity and suit the localities and neighborhoods where they are built. Several North American Muslim communities have made laudable efforts in this direction already.

Throughout history, Muslim mosques have been the products of regional cultures and subcultures. Islam does not dictate a set design for mosques; the only necessary architectural element in a mosque is that it have an area for prayer. Some Muslims regard domes and minarets as essential features of the mosque. The Prophet's mosque did not have a dome or minarets during his lifetime. Domes and minarets were post-Prophetic cultural innovations in the Muslim world. The dome was a relatively late development in Islamic architecture; its design was created to allow for expansive prayer areas that were not taken up by pillars in an age when builders did not have access to iron and steel beams. Minarets were also later developments. They were ideal for making the call to prayer in an age without microphones, but they also had a second primary purpose. Just as lighthouses are beacons for ships, minarets were originally beacons for caravans. Bonfires were lit on the tops of the minarets after the night prayer to give distant caravans a point of reference. The name "minaret"

reflects their original cultural function; in Arabic *mināra* (minaret) means "place of fire." Muslims in China, Andalusia, and North and West Africa did not adopt domes or minarets, in part, because they did not suit their environments.

A mosque should fit in harmoniously with its surroundings. Historically, the design, structure, and landscaping of mosques were suited to local and regional architectural norms, topography, and climate. Mosques should not clash with indigenous tastes and styles; they should not appear out of place or give the impression of being foreign transplants. Like all architectural achievements, creation of American mosque styles requires artistic, technical, and cultural genius. At a time when secular architecture is the dominant norm, the Western mosque must be attractive and inviting by today's standards yet readily identifiable as sacred space.

CONCLUSION

Islam is a religion of humane rationales and practical objectives. Application of the religion in practice must be consistent with them. Islam must make sense, but, to make sense, it requires intelligent followers with sound understanding. The five operational principles discussed in this paper — trusting reason, respecting dissent, stressing societal obligations, setting priorities, and embracing maxims — help impart such an understanding and provide the basic guidelines for living Islam with purpose. These five principles leave no further justification for inaction, dysfunction, and mere formalities. They require our community to set priorities, understand the challenges before them, and work at fulfilling their private and societal obligations as effectively as possible.

Islam in America has deep historical roots that go back at least as far as the colonial period. Its present development is relatively recent and has occurred over the course of the twentieth century. Because the American Muslim community is still young, it has not taken definite shape or adopted hard and fast points of view. As stated in the introduction: "The beginnings are the manifestation of the ends." Good beginnings promise good futures; putting down a sound foundation makes it possible to build an enduring edifice. But the opposite is also true. It is critical for American Muslims, as we move forward, to lay strong foundations and make new beginnings. Determining the way forward cannot be left to others and cannot be left to chance.

At present, different groups and different visions of Islam compete for the American Muslim community's allegiance. The contest of ideologies will probably continue for years to come, but ultimately a particular vision of Islam is likely to predominate. Once a distinctive vision of Islam has been effectively established among American Muslims, a new chapter in their history will begin. That vision, once established, will become Islam's default position in the United States and dictate for generations how the Muslim community understands itself and the world around it. It will automatically set its own priorities and objectives. Ultimately, the vision of Islam that comes to prevail here will be the primary determinant of whether Islam succeeds in the United States or fails. If the vision of Islam that finally predominates in America is authentic and wise, it will constitute a worthy precedent and an enduring model for further development. If it is deficient, it will remain a constant obstacle for future generations.

Our generation of American Muslims will likely play the pivotal role in the first effective establishment of Islam in the United States. This lot is unlikely to fall to our children or grandchildren. They will either be the beneficiaries of our success or the victims of our failure. Indifference toward the future of Muslims in America is not just an offense to the community; such indifference will lead to irremediable historical mistakes. The supreme societal obligation that falls upon our generation in building the American Muslim community of the future is to identify the priorities and primary societal obligations that concern us and to acquire the means to meet them. The five operational principles are among the greatest of our resources and constitute a necessary component of eventual success.

❖ ACKNOWLEDGEMENTS: I am deeply indebted to all who assisted me with this paper, especially (in alphabetical order): Ibrahim Abusharif, Adnan Arain, Affan Arain, Mazen Asbahi, Cima Dairanieh, Issam Dairanieh, Ayat Elnoory, Zareena Grewal, Asim Kamal, Hisham Mahmoud, Aftab Malik, Preacher Moss, Omer Mozaffar, Nadiah Mohajir, Tariq Mohajir, Rami Nashashibi, Asifa Quraishi, Omar Qureshi, Fakhia Rashid, Huma Rashid, Kareem Salama, Hina Sodha, Roohi Younus, and Asra Yousufuddin.

NOTES

1. Transmitted in *Ṣaḥīḥ Bukhārī, Ṣaḥīḥ Muslim, and Musnad Ibn Ḥanbal*. Note: All translations of Arabic texts in this paper are the author's. Arabic makes extensive use of ellipsis and has distinctive terminology, which imply meanings that are not stated in the original text or readily understood in translation. It is common to use brackets to clarify these meanings and indicate that they are not literally expressed in the original. If brackets were used in the translation above, it would read: "You will find that people are mines [of gold and silver]. The best of you [before Islam] in the time of ignorance are the best of you in Islam if they have understanding [of the religion]." I have avoided the use of brackets throughout this paper to make it easier to read.
2. In general, American Muslims are well educated and hardworking. Per capita, they are one of the most educated and prosperous Muslim communities in the world. A large percent have college degrees and their percentage is significantly greater than corresponding figures for the American population at large. American Muslims have a high rate of employment and work in almost all professions from taxi drivers and corner grocery store owners to physicians, engineers, and lawyers. The average American Muslim income is relatively high, making them among the more affluent segments of the American population. See Paul Barrett, *American Islam* (New York: Farrar, Straus, and Giroux, 2007), 9-10. Compare the more conservative estimates of the Pew Research Center survey: http://people-press.org/reports/display.php3?ReportID=329.
3. Note: I use the word "Hadith" throughout this paper for both the singular and plural forms.
4. Susan Spectorsky, "Sunnah in the Responses of Isḥāq ibn Rāhawayh," in Bernard G. Weiss, ed. *Studies in Islamic Legal Theory* (Leiden: Brill, 2002), 70.

5. ʿAbd al-Karīm ibn Ibrāhīm al-Jīlī, *Al-Insān al-Kāmil fī Maʿrifat al-Awākhir wa al-Awāʾil* (Cairo: Maṭbaʿat al-Ḥalabī, 1970), 12.

6. Aḥmad ibn Muḥammad ibn ʿAṭāʾ-Allāh al-Sakandarī, *Al-Ḥikam al-ʿAṭāʾiyya wa al-Munājāh al-Ilāhiyya* (Damascus: al-Maṭbaʿat al-Hāshimiyya, n.d.), 67.

7. The five pillars are the testimony of faith, prayer, fasting, alms, and pilgrimage.

8. The five act classifications are: obligatory (*wājib*; *farḍ*), recommended (*mandūb*), permissible (*mubāḥ*), reprehensible (*makrūh*), and forbidden (*ḥarām*). These five act classifications reflect the nuances of Islamic ethics. They can be divided into two distinct counterparts surrounded by varying shades of gray. The counterparts are the forbidden and the obligatory. The remaining three classifications constitute varying degrees of ethical strength and weakness. The forbidden is categorically wrong, morally iniquitous, and must never be done. Its counterpart, the obligatory, is categorically good, morally binding, and must always be done. As for the three marginal categories, it is allowable to perform any of them, although their ethical merits differ greatly. The reprehensible ought not be done. Yet it is neither categorically wrong nor iniquitous; therefore, it may be done without incurring iniquity or deserving blame. The permissible is neutral; it lacks ethical distinction and may or may not be done, as one chooses, without deserving praise or blame. The recommended is laudable and good; one ought to do it and deserves praise for doing so, yet failure to perform what is recommended incurs no iniquity or blame.

9. Transmitted in *Ṣaḥīḥ Bukhārī, Saḥīḥ Muslim*, and other authoritative Hadith sources.

10. Muḥammad ibn Muḥammad al-Ghazālī, *Iḥyāʾ ʿUlūm al-Dīn*, 4 vols. (Damascus: Maktabat ʿAbd al-Wakīl al-Durūbī, nd.), 1:73.

11. According to ʿAlī ibn Muḥammad al-Bassāmī, the ten elements of moral character are: 1) reason (*ʿaql*), 2) sound religious practice (*dīn*), 3) knowledge (*ʿilm*), 4) forbearance (*ḥilm*), 5) magnanimity (*jūd*), 6) truthfulness (*ṣidq*), 7) fulfilling moral obligations (*birr*), 8) patience (*ṣabr*), 9) thankfulness (*shukr*), and 10) lenience (*līn*).

12. "Rationalism" in Islamic theology refers to any methodology that makes reason a principal device for reaching the essence of revelatory truth. The Muʿtazilī, Ashʿarī, and Māturīdī schools were all rationalist in this sense and relied upon reason to interpret revelation, especially when the two appeared to conflict. Each of the schools demonstrated intellectual consistence and sophistication. In some regards, Muʿtazilī rationalism was less original and more literal than the other two schools. In the well-known controversies over the eternity of divine speech and the beatific vision, the Muʿtazilīs insisted on literal definitions of speech and sight as the natural phenomena that human beings call by those names. The Ashʿarīs and Māturīdīs, on the other hand, argued that restriction of these and similar words in religious language to their literal meanings when talking about God constituted false analogies between the utterly disparate worlds of the human and the divine, the created and the uncreated, and the seen and the unseen, where no known analogies apply. The Ashʿarīs and Māturīdīs argued that religious language took on different meanings in different metaphysical contexts. While the Muʿtazilī and Ashʿarī schools are highly dialectical, the theology of the Māturīdīs stands out for its systematic methodology and independence of thought. Western academics have often argued that the demise of the Muʿtazilī school among Sunnīs (it continues to be the principal theological school of the Shīʿīs) severely limited the role of reason in Islamic law. This notion grows out of a confusion between the theological rationalism of Muʿtazilī ethics and the fundamentally different pragmatic mode of reasoning in Islamic law, which was largely unaffected by the great theological debates and continued unabated long after the Muʿtazilīs. The Muʿtazilīs had little effect on the development of Islamic positive law. Most of them followed the

Ḥanafī school of law and saw no contradiction between their theological and legal positions. See Umar F. Abd-Allah, "Theological dimensions of Islamic law" in *The Cambridge Companion to Islamic Theology*, ed. T. J. Winter (Cambridge: Cambridge University Press, forthcoming).

13. Jābir ibn Ḥayyān, *Kitāb al-Sabʿīn* (Frankfurt: Maʿhad Tārīkh al-ʿUlūm al-ʿArabiyya, 1986).

14. See Khayr al-Dīn al-Ziriklī, *Al-Aʿlām: Qāmūs Tarājim li-Ashhar al-Rijāl wa al-Nisā' min al-ʿArab wa al-Mustaʿribīn wa al-Mustashriqīn*, 8 vols. (Beirut: Dār al-ʿIlm li-al-Malāyīn, 1992), 5:318.

15. See al-Ziriklī, *Al-Aʿlām*, 6:313.

16. See Umar F. Abd-Allah, "Innovation and Creativity in Islam," at http://www.nawawi.org/downloads/article4.pdf

17. The most frequently cited reasons for embracing Islam are: 1) simplicity of doctrine, 2) rationality (reasonableness), 3) absolute monotheism, 4) this-worldly focus, 5) and lack of a priesthood. See Larry Poston, *Islamic Daʿwah in the West* (New York: Oxford University Press, 1992), 176-78.

18. Note the fact that belief in God's oneness, the Last Judgment, the prohibition of murder, and many other beliefs and rulings are categorically authoritative does not mean that they are on a par with each other in terms of their theological importance. It means that there can be no doubt that each of them is an established part of Qur'anic and Prophetic teaching. As such, they must be acknowledged as valid by anyone who claims to believe in the Qur'an and the Prophet.

19. These numbers are based on contrary Hadith of presumptive authenticity. One states that the number of Prophets that God sent throughout human history was 124,000; another transmission sets the number at 224,000. Because the numbers are conjectural, Muslim may accept either number or disregard them both.

20. See Umar F. Abd-Allah, "The Principal Imams and Their Schools," 14 CDs (Chicago: The Nawawi Foundation, 2004); also see ibid., "Mālik's Concept of ʿAmal in the Light of Mālikī Legal Theory," 2 vols. (University of Chicago Ph.D. dissertation, 1978), 1:121-279.

21. Shihāb al-Dīn Aḥmad ibn Idrīs al-Qarāfī, *Al-Iḥkām fī Tamyīz al-Fatāwā ʿan al-Aḥkām wa Taṣarrufāt al-Qāḍī wa al-Imām* (Beirut: Dār al-Bashā'ir al-Islāmiyya, 1995), 99, 109-11.

22. ʿAbd al-Karīm al-Rifāʿī and others, *Sharḥ Jawharat al-Tawḥīd li-al-Imām al-ʿAllāma al-Shaykh Ibrāhīm al-Bājūrī* (n.p.: n.p., 1972), 188-92.

23. See Muḥammad ʿAbd al-Ḥayy al-Kattānī, *Niẓām al-Ḥukūma al-Nabawiyya al-Musammā bi al-Tarātīb al-Idāriyya*, 2 vols. (Beirut: Dār al-Arqam, n.d.), 2:79-89.

24. My reference for the use of comedians for mental and medical therapy is Dr. Mohamed Serag, professor of Islamic law at the American University of Cairo. The therapeutic use of music goes back to the ancients and is well attested in Islamic civilization. Andalusian Muslims held that certain musical keys were more effective than others in treating particular mental illnesses. The Nawawi Foundation visited an Islamic medical museum in Turkey outside the city of Edirne in 2004. The museum contained an exhibition on the therapeutic use of hobbies and music in traditional Islamic medicine.

25. Al-Ziriklī, *Al-Aʿlām*, 1:94-95; Aḥmad ibn Idrīs al-Qarāfī, *Nafā'is al-Uṣūl fī Sharḥ al-Maḥṣūl*, ʿĀdil ʿAbd al-Mawjūd and ʿAlī al-Muʿawwad, eds., 9 vols. (Makka: Maktabat Naẓẓār Muṣṭafā al-Bāz, 1997), 1:441-42.

26. It has become customary for certain Muslims to reject outright this and similar Hadith on grounds of weakness. A weak Hadith is not a false Hadith; a weak Hadith is a presumably authentic Hadith, the authenticity of which cannot be verified. This report belongs to the category of popular Hadith, because most Muslims have heard of it and often refer to it. The Hadith is recorded in respectable collections like those of al-Bayhaqī, al-Ṭabarānī,

and al-Daylamī. A number of renowned scholars, among them al-Khaṭṭābī and al-Nawawī, defended it. Al-Bayhaqī transmits a parallel transmission, which reads as follows: "Whatever has been given you of the Book of God, no one is excused from not putting it into practice. If there is nothing in the Book of God, then follow a well-established Sunna from me. If there is no Sunna from me, then follow what my Companions have said. My Companions are like the stars in the sky; whichever of them you follow, you will be rightly guided: The differences of my Companions are a mercy for you." Al-Khaṭṭābī said in his discussion of this Hadith: "There are three types of dissent in the religion. The first pertains to affirming the existence of the Maker and His oneness. To deny it is disbelief. The second pertains to the nature of His attributes and His will. To deny them is an innovation. The third pertains to rulings from various perspectives in the conjectural (*muḥtamila*) derivations (*furūᶜ*) of the law. God has made this a mercy and distinctive honor (*karāma*) for the scholars. This is what is meant by the Hadith: 'The differences of opinion of my nation are a mercy'." See Ismāᶜīl ibn Muḥammad al-ᶜAjlūnī, *Kashf al-Khafā' wa Muzīl al-Ilbās ᶜammā Ishtahara min al-Aḥādīth ᶜalā Alsinat al-Nās* (Beirut: Dār al-Kutub al-ᶜIlmiyya, 1988), 64-66.

27. Al-ᶜAjlūnī, *Kashf al-Khafā'*, 64-66.

28. See ᶜAlī ibn al-Qaṣṣār, *Al-Muqaddima fī al-Uṣūl*, (Beirut: Dār al-Gharb al-Islāmī, 1996), 114-15; Abū al-Walīd al-Bājī, *Iḥkām al-Fuṣūl fī Aḥkām al-Uṣūl*, 2 vols. (Beirut: Dār al-Gharb al-Islāmī, 1995), 2:714-16; and Umar F. Abd-Allah, "Creativity and Innovation in Islam" at http://www.nawawi.org/downloads/article4.pdf.

29. George Makdisi, *The Rise of Humanism in Classical Islam and the Christian West: with Special Reference to Scholasticism*, (Edinburgh: Edinburgh University Press, 1990), 22-29; see also ibid., *The Rise of Colleges: Institutions of Learning in Islam and the West* (Edinburgh: Edinburgh University Press, 1981), 108-11, 148-50.

30. The Hadith is transmitted by al-Tirmidhī, Ibn Mājah, and Aḥmad ibn Ḥanbal. Al-Tirmidhī classifies its degree of authenticity as good. The Hadith's narrator defines "obscurity" (*ᶜamā'*), which also means "blindness," as solitary existence without the existence of any other thing. The Arabic word *ᶜamā'* also refers to a type of heavy cloud covering. Commentators say that the Prophet's reference to there being no atmosphere above or below the hiddenness was meant to remove the possible misperception that God had been in a bank of clouds.

31. The Inner-City Muslim Action Network (IMAN) has recently teamed up with the Applied Research Center (ARC) to publish a community-driven research document on this subject. For more details, please see: http://www.imancentral.org.

32. *Ṣaḥīḥ Muslim, Sunan al-Nisā'ī, Sunan Ibn Mājah*, and *Musnad* al-Imām Aḥmad ibn Ḥanbal.

33. Wolfhart Heinrichs, "*Qawāᶜid* as a Genre of Legal Literature," 372.

34. I prefer to translate the Arabic word *nasl* as "children," because of the palpable nature of the word and the centrality of children in Islam and in the wellbeing of families and societies. "Children" is a valid translation of the word *nasl* in its fundamental lexical sense of *al-walad*; *nasl* is often rendered as progeny, which is another valid translation of the word in the lexical sense of *al-dhurriyya*. In Arabic, the second meaning, "progeny," essentially means "generations of children." As a major objective of Islamic law, protection of children is closely tied to the institution of the family. Muslim scholars frequently use the word *nasab* (lineage) in its place.

35. Little material on Islamic legal maxims exists in English. The best available sources are the CD set of Shaykh Abdallah bin Bayyah and the two academic articles of Wolfhart Heinrichs, mentioned below. The maxims stated throughout this paper and many of the observations related to them come from a variety of references. The most important are the following, which are also the

principal sources for most of the relevant Qur'anic verses and Hadith cited in conjunction with the maxims: ʿAbd-Allāh ibn ʿAbd al-ʿAzīz al-ʿAjlān, *Al-Qawāʿid al-Kubrā fī al-Fiqh al-Islāmī* (Riyadh: Dār Ṭayba, 1996); Yaʿqūb ibn ʿAbd al-Wahhāb al-BāḤusayn, *Qāʿidat al-Umūr bi-Maqāṣidihā: Dirāsa Naẓariyya wa Ta'ṣīliyya* (Riyadh: Maktabat al-Rushd, 1999); Shaykh Abdallah bin Bayyah, "The Legal Philosophy of Islam," 13 CDs (San Jose: Alhambra Productions, 2000); ʿAlī Aḥmad al-Nadawī, *Mawsūʿat al-Qawāʿid wa al-Ḍawābiṭ al-Fiqhiyya al-Hākima li-al-Muʿāmalāt al-Māliyya fī al-Fiqh al-Islāmī*, 3 vols. (n. p.: Dār ʿĀlam al-Maʿrifa, 1999); Wolfhart Heinrichs, "Structuring the Law: Remarks on the *Furūq* Literature," in Ian Richard Netton, ed., *Studies in Honour of Clifford Edmund Bosworth*, vol. 1: *Hunter of the East: Arabic and Semitic Studies* (Leiden: Brill, 2000), pp. 332-44; ibid, "*Qawāʿid* as a Genre of Legal Literature," in Bernard G. Weiss, ed. *Studies in Islamic Legal Theory* (Leiden: Brill, 2002), pp. 365-84; [Taqī al-Dīn Aḥmad ibn Taymiyya], *Al-Qawāʿid al-Fiqhiyya al-Khams al-Kubrā wa al-Qawāʿid al-Mundarija Taḥtahā: Jamʿ wa Dirāsa min Majmūʿ Fatāwā Shaykh al-Islām Ibn Taymiyya*, Ismāʿīl ibn Ḥasan ibn Muḥammad ʿAlwān, ed. (Riyadh: Dār ibn al-Jawzī, 2000); and Aḥmad ibn al-Shaykh Muḥammad al-Zarqā, ed. Muṣṭafā al-Zarqā, *Sharḥ al-Qawāʿid al-Fiqhiyya* (Damascus: Dār al-Qalam, 1998).

36. *Sunan Abī Dāwūd* and *Musnad al-Imām Aḥmad ibn Ḥanbal*. Al-Tirmidhi transmits the Hadith with a slightly different wording: "Whoever imitates other than us is not of us."

37. Ibn Taymiyya, *Al-Qawāʿid al-Fiqhiyya*, 122.

38. Akram Ḍiyā' al-ʿAmrī, *Al-Sīra al-Nabawiyya al-Ṣaḥīḥa*, 2 volumes (Medina: Maktabat al-ʿUlūm wa al-Ḥikam, 1994), 2: 450-51.

39. Ibn Taymiyya, *Al-Qawāʿid al-Fiqhiyya*, 217.

40. See al-Nadawi, *Al-Qawāʿid wa al-Ḍawābiṭ*, 60.

41. Ibn Taymiyya, *Al-Qawāʿid al-Fiqhiyya*, 206, 211-18.

42. I am using "patriarchy" in the sense defined by Asma Barlas as: "A politics of sexual differentiation that privileges males by 'transforming biological sex into politicized gender, which prioritizes the male while making the woman different (unequal), less than, or the 'Other'." See Asma Barlas, *"Believing Women" in Islam: Unreading Patriarchal Interpretations of the Qur'ān* (Austin: University of Texas Press, 2002), 12.

43. See Umar F. Abd-Allah, "Famous Women in Islam," 14 CDs (Chicago: Nawawi Foundation, 2004).

44. The family name "Samarqandī" means "from Samarqand." Her family was Syrian but originally hailed from Central Asia.

45. ʿUmar Riḍā Kaḥḥāla, *Aʿlām al-Nisā' fī ʿĀlamay al-ʿArab wa al-Islām*, 5 vols. (Beirut: Mua'ssasat al-Risāla, 1991), 4:94-95; see also Umar F. Abd-Allah, "Famous Women in Islam," 14 CDs (Chicago: Nawawi Foundation, 2004).

46. See Umar F. Abd-Allah, "Islam and the Cultural Imperative," http://www.nawawi.org/downloads/article3.pdf

47. "Islam and the Cultural Imperative," p. 5.

48. There was no monolithic Arab culture in pre-Islamic Arabia. Like cultures over the world, pre-Islamic Arabian culture was diverse and made up of numerous subcultures. The cultural norms of the pre-Islamic Arabs as well as their dialects differed notably from region to region and from tribe to tribe. One of the important consequences of the Prophet's migration to Medina is that it enmeshed him and his followers in the cultural norms of Medina, which varied notably from those of Mecca.

49. See Abd-Allah, "Islam and the Cultural Imperative."

50. Ibn Taymiyya, *Al-Qawāʿid al-Fiqhiyya*, 226-28.